

**REPORT OF THE SENATE IMPEACHMENT TRIAL
COMMITTEE ON THE ARTICLES AGAINST
JUDGE WALTER L. NIXON, JR.**

**HEARINGS
BEFORE THE
SENATE IMPEACHMENT TRIAL
COMMITTEE
UNITED STATES SENATE
ONE HUNDRED FIRST CONGRESS
FIRST SESSION**

ON

**THE ARTICLES OF IMPEACEMENT AGAINST JUDGE WALTER L. NIXON,
JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDE-
MEANORS**

**PRIOR RECORD ADMITTED INTO EVIDENCE:
WALTER L. NIXON, JR. v. U.S.A.
NO. H88-0052(G)
(POST-CONVICTION PROCEEDING)**

Part 4C of 4 Parts



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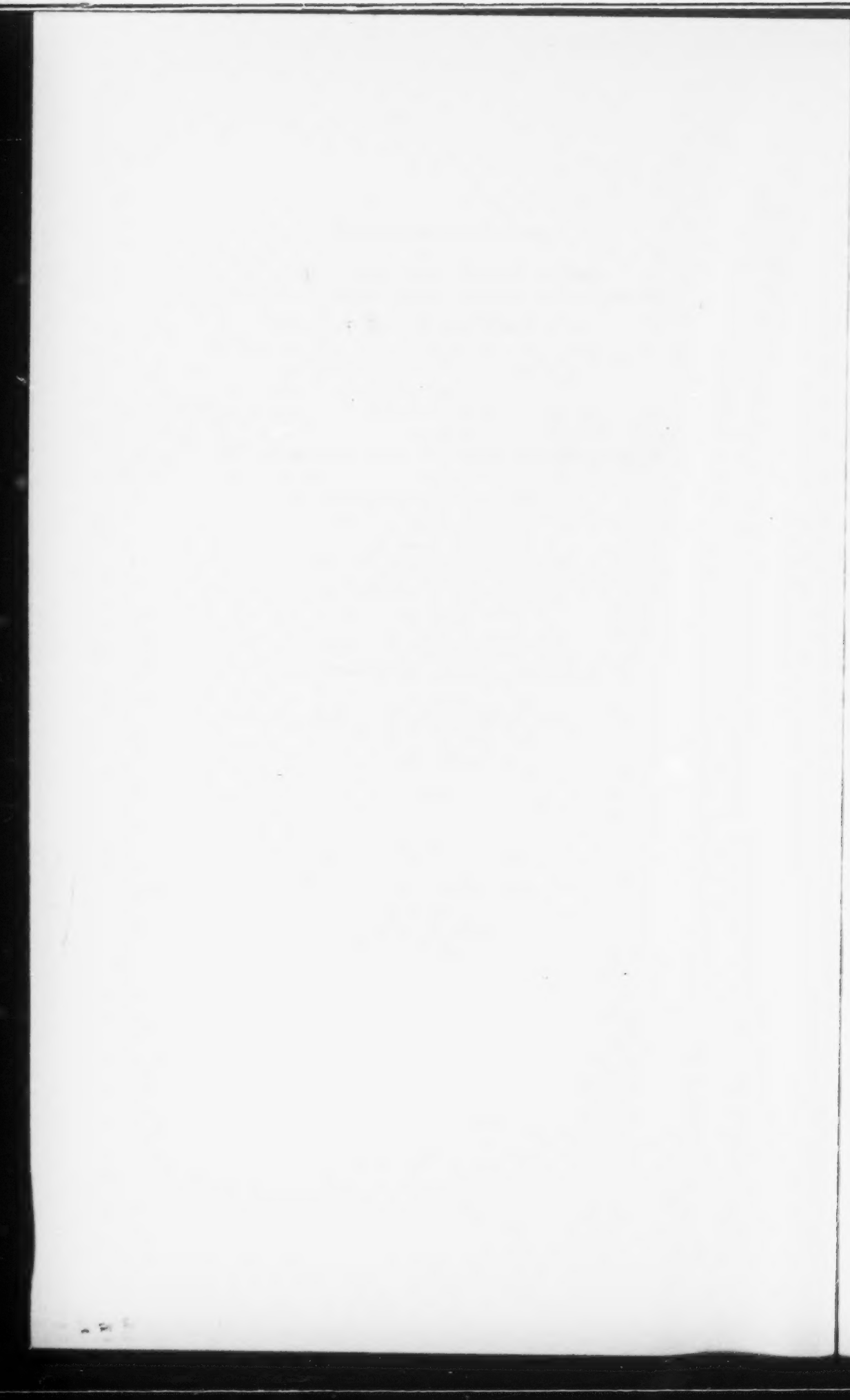
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF MISSISSIPPI
3 HATTIESBURG DIVISION

4 WALTER L. NIXON, JR.

5 PETITIONER,

6 V.

NO. H86-0052(G)

7 UNITED STATES OF AMERICA

8
9 RESPONDENT.

10
11 TRANSCRIPT OF PROCEEDINGS
12

13
14 BEFORE: THE HONORABLE JOHN F. NANGLE,
15 CHIEF JUDGE

16 DATE: AUGUST 29 & 30, 1988

17 PLACE: JACKSON, MISSISSIPPI

18 APPEARANCES:

19
20 FOR THE PETITIONER:

MR. DAVID O. STEWART
MR. BOYCE HOLLEMAN
MR. MICHAEL B. HOLLEMAN

21
22 FOR THE RESPONDENT: /

MR. JAMES M. COLE

23
24 COURT REPORTER:

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1 (In chambers.)

2 THE COURT: We're in chambers and we have Mr. David
3 Stewart for the Petitioner and Mr. James Cole for the
4 Government; along with one of my staff members and two
5 members of the FBI, who are here solely and singularly for
6 the purpose of answering any questions that might be raised
7 about matters. I don't know if we need any. Do you
8 anticipate?

9 MR. STEWART: I have no idea until the Court
10 reviews those materials.

11 MR. COLE: Your Honor, in that regard it's for the
12 in camera submission which, frankly, my position would be Mr.
13 Stewart wouldn't be involved at this point. It would just be
14 to satisfy Your Honor's curiosity should any arise.

15 THE COURT: All right. Mr. Stewart was going over
16 some preliminary matters and first handed me Exhibit 16.

17 MR. STEWART: Yes, sir.

18 THE COURT: Which is an exhibit that was just
19 recently obtained in the last several days from Mr. Cole and
20 Mr. Cole pointed out he just himself came across it and it
21 will speak for itself and I'll take a look at it. David, you
22 were on to another one.

23 MR. STEWART: All right. We have three more
24 documents. If the record can reflect.

25 THE COURT: Hi, Mr. Hollenman, Sr. and Jr.

1 MR. STEWART: My co-counsel are arriving.

2 I came into the possession Friday of three documents
3 which I had never seen or had before. They're handwritten.
4 I was able to get the handwriting identified for the first
5 time as the handwriting of John Baltar who is scheduled to be
6 a witness. Mr. Baltar does identify these documents. They
7 relate to the elements that he was going to testify to.
8 What's been marked as Exhibit 17 are his notes reflecting --

9 THE COURT: Is this part of the script or these are
10 separate and apart therefrom.

11 MR. STEWART: The first one relates to the informal
12 agreement at the time of the plea agreement that the charges
13 might be dropped in certain events. These are his notes.
14 That's Exhibit 17. They're notes of a telephone call he had
15 with Wiley Fairchild's counsel, Barry Hess.

16 Exhibit 18 is a document, it is five pages long, which
17 involves his notes that he prepared to assist Wiley Fairchild
18 in testifying before the Grand Jury on November 28, 1984. He
19 prepared these based on some information he was able to
20 develop from Mr. Fairchild's counsel and also based on his
21 conferences with Reid Weingarten. The last page of this
22 document -- did you have this page in what we sent you, Jim?

23 MR. COLE: I don't think so.

24 MR. STEWART: I don't think it belongs there. That
25 makes it a four-page document.

1 MR. COLE: May I see it?

2 MR. STEWART: You're welcome to see it. We don't
3 know whose handwriting that is. Mr. Baltar cannot identify
4 it affirmatively.

5 MR. COLE: Can I ask if it was attached to the
6 document when you found it?

7 MR. STEWART: It was not as I recall. It should
8 not have been stapled here. Mr. Baltar described this in his
9 affidavit of August 3 that there was such a document. We
10 were unable to track it down until Friday. That's Exhibit
11 17.

12 Exhibit 19 is a ten-page document also in Mr. Baltar's
13 handwriting which he says was a source of Exhibit 18. This
14 was a long chronology, it was much more thorough, that he
15 prepared and that he then distilled into Exhibit 18 and
16 provided to Mr. Fairchild. He only provided Exhibit 18 to
17 Mr. Fairchild. Exhibit 19 was only for Mr. Baltar's use.
18 And there is material in Exhibit 18 which is not reflected in
19 Exhibit 19.

20 When we were able to get the handwriting identified,
21 which was Saturday, I did call Mr. Cole, I think in the early
22 evening, reached him at his hotel, described this to him, and
23 we dropped them off that evening.

24 THE COURT: This past Saturday?

25 MR. COLE: That's correct.

1 THE COURT: Okay. First, did you want to say
2 anything about any of these in succinct fashion, Mr. James
3 Cole?

4 MR. COLE: Succinctly, Your Honor, I quite frankly
5 find this very suspicious that at the last minute when they
6 have had access for all of these months and months from Mr.
7 Baltar to Mr. Fairchild to all the people in this case at the
8 11th hour and 59th minute that they come up with these
9 exhibits. I find it dubious at best. I think one of the
10 questions that needs to be dealt with is the Court has denied
11 the motion to amend. And, in that regard, I'm not sure what
12 these go to.

13 THE COURT: Let me answer it this way. I said off
14 the record before our Court Reporter came in and I'll mention
15 again. On one hand, of course, this is a non-jury case and
16 rather than make a big fuss over exhibits, my general
17 inclination is like most judges, namely to take it along with
18 the case and see, you know, to what avail or relevance, et
19 cetera, it might be.

20 With regard to the Baltar material, his affidavit, of
21 course, perhaps these, I haven't even seen these, have a lot
22 of real solid hearsay. And so I suspect the best way, I just
23 won't make any rulings on these until we've heard from Mr.
24 Baltar. I don't see any -- and hear what he's got to say
25 himself about what he did. Because otherwise even with

1 regard to admitting the Baltar affidavit as far as being
2 evidence in this case is concerned. So that's with regard to
3 17, 18, and 19.

4 Exhibit 16, I'll take a look at it. Is there anything
5 that we will -- I'll have to take a look at this before I go
6 in because I gather it relates to the question in chief.
7 That's what you're representing.

8 MR. STEWART: Yes, sir.

9 THE COURT: Apparently it does.

10 Now lets get back to the beginnings with regard to the
11 pretrial filing.

12 MR. COLE: Your Honor, if I can, just for the
13 record, I'd like to state in accordance to the Court's order
14 I've turned over to the Court a full and complete copy of
15 Wiley Fairchild's July, 1984, Grand Jury.

16 THE COURT: Yes. I'm glad you noted it and that's
17 in my possession and I'll order that it be made part of the
18 record in this matter. Is there any reason at this stage for
19 that to be sealed? I'll depend upon you gentlemen indicating
20 to me what you think should be sealed, if anything.

21 MR. COLE: I don't think there's any reason to seal
22 it, Your Honor.

23 THE COURT: Okay. As I said earlier, with regard
24 to the exhibits, I gather that -- the Government in its
25 pretrial filing has stipulated to the admissibility of all

1 the Petitioner's proposed exhibits except Exhibit 1 and the
2 entire transcript of the congressional hearing on the
3 impeachment of Petitioner which is listed under other
4 evidence. Now, that, of course, does not relate to 16, 17,
5 18, and 19, which have just been filed here today.

6 But that being so, David, unless you can tell me, I'm
7 most willing to wait until the conclusion of your case to
8 rule with finality. But I am, despite being pretty liberal
9 on admitting evidence in a non-jury case, I'm not inclined to
10 put in anything other than Weingarten and Fairchild from the
11 congressional hearings because most of it is argument and
12 testimony on other questions.

13 MR. STEWART: Your Honor, we do think that it
14 should be permitted. I'm not going to go on at great
15 length. If the Court is going to deny that, there are some
16 additional pages we would designate.

17 THE COURT: I'll give you time. So we'll know
18 where we stand. We won't have to worry about exhibits.
19 Other than what we just raised today, I think that I have --
20 and the Baltar affidavit, you know, I'm, again, inclined to
21 -- more than inclined. I don't see any reason to admit it.
22 We will see what his testimony is and I'll rule with finality
23 on that at the conclusion of the Petitioner's case or at the
24 end of the case so we don't have to lose any time and effort
25 over that. I'll come back.

1 Was there a big fuss or any fuss over the Government's
2 Exhibits?

3 MR. STEWART: Your Honor, I have to raise one point
4 with respect to Exhibit 16 which I failed to.

5 THE COURT: Okay.

6 MR. STEWART: That is a redacted exhibit. They
7 only gave me part of this communication which came from the
8 Jackson Office to Washington and it refers to a previous
9 teletype of October 18, 1984. This is dated November 2nd.

10 To set the stage, November 1, there is this keen meeting
11 where there is a proffer made by Wiley Fairchild and that is
12 tape recorded and that is marked as an exhibit. The previous
13 teletype on October 18 we think there were negotiations
14 throughout. I'm puzzled why that previous teletype is not --
15 did not cover this matter since there were such
16 conversations, I believe. And similarly I would -- am
17 curious -- I would seek a representation as to what the
18 balance of this teletype refers to since it all refers to the
19 Nixon case or apparently refers to the Nixon case.

20 MR. COLE: If I could respond to that briefly on
21 the two points. Number one, from my understanding airtels
22 are sent periodically by the FBI to headquarters to appraise
23 them of developments in the case. They are internal
24 documents. Just because there was an airtel prior to
25 November 2nd doesn't mean it covered anything that was within

1 the Court's order. And indeed I think the evidence is going
2 to show there was not really plea negotiations prior to that
3 time.

4 And certainly if there had been airtels that did cover
5 such plea negotiations, such offers or promises by the
6 Government to Mr. Fairchild as covered by the Court's order,
7 would have been provided.

8 As to the redacted portions of it, my submission to Your
9 Honor at this point in the presence of Mr. Stewart, these are
10 internal documents. The FBI doesn't like to disclose them.
11 They don't contain any offers or promises that were made by
12 the Government to Mr. Fairchild in the redacted portions.

13 THE COURT: Anything further that either of you
14 wishes to --

15 MR. STEWART: Well, I'd be curious if it includes
16 anything relating to what Mr. Fairchild told the Government
17 because that also is covered by the Court's order of last
18 Thursday.

19 MR. COLE: Well, the Court's order of last Thursday
20 covers an in-camera submission which the Government is
21 prepared to make and doesn't feel that it needs to inform Mr.
22 Stewart of the nature of it at this point. That's for the
23 Court to decide after it's reviewed.

24 THE COURT: The Petitioner's objections with regard
25 to the -- all of this is a part of our record in this matter.

1 the Government's stipulations and objections to the
2 Petitioner's evidence and likewise the Petitioner's
3 stipulations and objections to Respondent's evidence as well
4 as the pretrial filings.

5 If I understand, David, you object, and I understand the
6 basis, to the testimony of the witnesses listed because of
7 the reasons set out and I'll overrule that objection.

8 Concerning the exhibits, Exhibit 1.

9 MR. STEWART: I believe that's Exhibit I.

10 THE COURT: I and J. They're exchanges of letters
11 between you and -- I haven't looked at them so if there's
12 still a dispute I'll have to take a look at them first.

13 MR. STEWART: We don't see any relevance.

14 THE COURT: Just an exchange of something in this
15 case.

16 MR. STEWART: When I left the status conference in
17 St. Louis, I said there were things that had not been
18 produced in discovery that I had expected to be produced and
19 Mr. Cole said well, send me a letter on it and tell me what
20 you think you should have seen. And I sent him a letter and
21 he wrote me a response.

22 MR. COLE: And I think it bears on Mr. Baltar's
23 credibility, Your Honor.

24 MR. STEWART: I think that's preposterous.

25 THE COURT: All right. I'll take a look at that.

1 We can go off the record.

2 (Off the record.)

3 THE COURT: For the record, we've been considering
4 one additional thing that should be noted on the record and
5 that's Mr. David Stewart's reference to Mr. Rodney Fairchild
6 as a prospective witness at this hearing. Give us the thrust
7 of what he will testify to.

8 MR. STEWART: We would expect Mr. Rodney Fairchild
9 to testify that he was present in the office of his brother
10 when Judge Nixon came by when Wiley Fairchild was going to
11 complain about Bud Holmes blackmailing him. It was a
12 disputed issue at trial. Mr. Rodney Fairchild will testify
13 that he excused himself from the conversation in the room
14 when the subject turned to that matter and did not hear the
15 substance of the conversation and that the next morning he
16 did hear from Wiley Fairchild and that Wiley had received a
17 phone call from -- had spoken to Judge Nixon on the phone
18 that night about that matter and it was going to be all
19 right. And Mr. Rodney Fairchild will testify that that
20 sequence of events occurred after the publicity in January of
21 1983 concerning Drew Fairchild's drug case being passed to
22 the inactive files.

23 THE COURT: Go ahead, Mr. Cole.

24 MR. COLE: First, I just want to ask Mr. Stewart
25 when he learned this information.

1 MR. STEWART: I learned this information Friday.
2 And I called Mr. Cole Friday evening to pass it on telling
3 him I was not sure if I would try to call Mr. Rodney
4 Fairchild as a witness. I do not have him under subpoena.

5 THE COURT: You have asked for him to be here.

6 MR. STEWART: I asked for him to come and he said
7 he was willing to come.

8 MR. COLE: And it is your statement prior to going
9 on the record that Mr. Rodney Fairchild had stated no one had
10 asked him about this subject.

11 MR. STEWART: I asked him that question and his
12 response to me was that he did not recall anybody ever asking
13 him this question before. He did confirm he had been before
14 the Grand Jury in the early stage of the investigation and he
15 did not recall any questions on this subject.

16 MR. COLE: Your Honor, aside from my objection
17 based on the representations made by counsel and their
18 appellate brief in this matter that this subject had no
19 significance whatsoever to the trial, the Government would
20 request permission to disclose part of Mr. Rodney Fairchild's
21 Grand Jury at this time.

22 THE COURT: All right. And you're basing that
23 request on a Rule 6.

24 MR. COLE: Rule 6 in conjunction with this
25 proceeding.

1 THE COURT: All right. First I will grant that
2 request and so order. And as I said off the record and
3 should say on, I have considerable doubt about the evidence
4 coming at this late stage. I don't mean today instead of
5 Friday or Saturday, but if a matter that is deemed to be so
6 significant particularly by the Petitioner and being the
7 Petitioner himself being present that there has not been any
8 kind of effort in this hearing to make any reference to
9 Rodney Fairchild or to call him and subpoena him or anything
10 of that sort. And I indicated sometime ago to the attorneys,
11 reminded them of their power of subpoena.

12 Mr. Stewart raised the question of access and I won't
13 debate that. I'll have to accept -- I wasn't there and I
14 would imagine that he wasn't next door and wasn't somebody as
15 you've said that Mr. Fawer was able to contact or whatever.
16 But it still seems mighty late to me. This issue has been
17 pounded and repounded. In my life as a Judge and a lawyer
18 before, I've never seen an issue that's been so pounded and
19 belabored as this particular one. And like everything, even
20 to life, there's got to be an end somewhere. I'll look at
21 the material that you have.

22 MR. COLE: I can provide it to the Court or I can
23 give an oral presentation to the Court briefly on what is in
24 there on the subject.

25 MR. STEWART: Judge, I would request that it be

1 provided to the Court and also to us so we know what's going
2 on.

3 THE COURT: What are we talking about when we say
4 material?

5 MR. COLE: There's a Grand Jury transcript that I
6 think is 20 pages long. There's about one or two pages
7 that's at all relevant and about four lines that's at all
8 relevant to this issue.

9 THE COURT: He said he was never contacted about
10 this matter?

11 MR. STEWART: He does not recall being questioned
12 on this point.

13 THE COURT: You've got Grand Jury testimony of him
14 about 20 pages and several pages on this point or a page or
15 two?

16 MR. COLE: Several lines on this point out of the
17 whole thing. But I would say it is directly on this point.

18 THE COURT: Well, do you have that?

19 MR. COLE: I have it down in my office.

20 THE COURT: It's 10:00 o'clock, a bit after, and
21 I've got to look at this material and I just as well get
22 going. I can look at that during the luncheon recess.
23 You're not going to come to him before then.

24 MR. STEWART: Right.

25 THE COURT: I'll recess if you do. Okay. I'll

1 excuse you all and, Celeste, you can get set up in Court.

2 MR. COLE: Judge, if I may, I'd like to make the
3 in-camera submission to the Court at this time.

4 THE COURT: Is that all? Do you have oral or
5 merely written?

6 MR. COLE: They're all written. There are two
7 versions of some of them. Some are redacted versions that
8 comply with the Court's order and some are the full versions
9 which include a number of things that are not within the
10 Court's order and I will give the Court whichever it wishes
11 on those copies.

12 THE COURT: Give me the -- how much of it is
13 redacted, 50 percent, 25?

14 MR. COLE: In some cases I think it's 50 percent;
15 in some cases 25. It's two documents, that's all.

16 THE COURT: Give it all to me.

17 MR. COLE: All right.

18 MR. STEWART: If I could inquire, Mr. Cole did
19 express to me when we spoke on the phone a few days ago that
20 he thought the Court's order was related only to notes of
21 agents. And having seen the order I told him I didn't think
22 so but I couldn't swear since it had only been read to me.

23 MR. COLE: Right. I would like to comment on that,
24 Judge. I was informed of the order Friday night when I got
25 to Jackson. Apparently Mr. Rainey had called my office after

1 I already left.

2 THE COURT: I'm sure it was late for all of you.

3 MR. COLE: And as it had been relayed to me, it was
4 calling for any notes, writings, memorandas, or other
5 writings concerning agent's interviews of Wiley Fairchild.

6 In reading the order this morning I noticed that it also
7 includes Government interviews of Wiley Fairchild, pretrial,
8 or interviews of Mr. Fairchild's representatives. To the
9 best of my knowledge and ability we have tried to come up
10 with everything that would even comply with the Court order
11 as we saw it today. The one area that I have not had a
12 chance to thoroughly research would be every box that's in
13 the public integrity section that has a piece of yellow paper
14 in it from a legal pad.

15 In response to Mr. Stewart's discovery request earlier
16 on and in response to his questions about notes of Reid
17 Weingarten's concerning an interview of Wiley Fairchild, I
18 did endeavor to make a search at that time of our boxes and
19 found nothing to comply with it. So, to the best of my
20 ability, I think we have given you everything that does fall
21 within the order that is in the possession of the
22 Government.

23 If there is something in our files that I had missed
24 before, it's there through oversight, but I doubt there is
25 something there. I just wanted to tell you what the length

1 and breadth of our search was in regard to today's
2 submission.

3 THE COURT: Okay.

4 MR. COLE: In that regard I will tender to the
5 Court 12 separate documents. And I noticed that the Court's
6 order also provided that it was documents which had not
7 previously been provided.

8 THE COURT: Right. It does not include --

9 MR. COLE: And in that regard I could take out some
10 documents because there are four 302s of Wiley Fairchild.

11 THE COURT: I don't want those. Those are not
12 supposed to be in there.

13 MR. COLE: Okay. There is the -- actually there's
14 five 302s of Wiley Fairchild. One concerns Fairchild's
15 refusal to testify. It's dated May 7 of '84. I don't know
16 if counsel got that. I'll include it.

17 MR. STEWART: I have never seen that.

18 MR. COLE: There is also the transcript of the
19 November 1st, '84, proffer which counsel has.

20 MR. STEWART: We have that.

21 MR. COLE: What you have is it.

22 MR. STEWART: There's a fifth 302?

23 MR. COLE: Yeah. It says his lawyers told him he
24 didn't want to talk.

25 MR. STEWART: Further interviews?

1 MR. COLE: Right. We are now down to seven
2 documents, Your Honor, the Government is producing.

3 THE COURT: All right. One of these I can't figure
4 if I'll read this writing or not.

5 MR. COLE: Your Honor, you asked for agent's notes.

6 THE COURT: Just to confirm what I would assume
7 everybody would understand needless to say the trial, the
8 entire transcript of the trial of this case and the
9 transcript of the after-trial hearing and all orders of the
10 Court are part of the record in this case. I'm talking about
11 the criminal trial, of course. And this being a civil case
12 in a different file I technically have to make that
13 assurance. And all of the pleadings and other filings in
14 that case I would deem to be a part of this record. Okay.

15 (Recess.)

16 (Open Court.)

17 THE COURT: Gentlemen, you don't have any more last
18 minute items for me, I trust.

19 MR. STEWART: We would just ask that the rule on
20 sequestration of witnesses be invoked.

21 THE COURT: Yes. That will be ordered. Marshal,
22 if you would note that no one should be seated in the
23 courtroom if he plans or she plans or is expected to be a
24 witness in this matter. And I'll depend upon the lawyers to
25 -- they know who's going to testify and who isn't.

1 MR. SCHLESINGER: If it please the Court, my name
2 is Milton Schlesinger from Hattiesburg, Mississippi. I
3 represent one of the witnesses, Wallace R. Gunn. Being an
4 officer of the Court, of course, I fully intend to carry out
5 all of my duties and responsibilities, but I would ask
6 permission to remain in the courtroom at all times.

7 THE COURT: Well, I didn't expect this. Mr.
8 Stewart, Mr. Cole, what's your position?

9 MR. COLE: Your Honor, as long as -- I'm not sure
10 Mr. Gunn is going to be called as a witness and as long as
11 Mr. Schlesinger agrees to abide by the sequestration order in
12 that he will not impart to any witness including his client
13 what's going on here, if he can handle that restriction on
14 the attorney/client relationship, I have no objection.

15 MR. STEWART: We would take the same position.

16 THE COURT: Yes, sir. Is that suitable?

17 MR. SCHLESINGER: That's fine. Thank you, Your
18 Honor.

19 THE COURT: Under those circumstances you may
20 remain.

21 MR. COLE: Your Honor, I wasn't sure if you wanted
22 to personally order the witnesses or not on the sequestration
23 order and so I had them all gather and I know that they're
24 not going to be needed at least until lunch time. Can I tell
25 them to go and do whatever it is they'd like to do in the

1 meantime?

2 THE COURT: That's perfectly suitable.

3 MR. COLE: May I be excused to do that?

4 THE COURT: Yes.

5 MR. COLE: Thank you, Your Honor. The Government's
6 ready to proceed.

7 THE COURT: Okay. Now let me just get things in
8 the right pile. I was telling the Clerk of the Court I'm
9 sure that if I want something I won't be able to find it.
10 We'll start off by trying.

11 I suspect that I need no opening statements, gentlemen,
12 but if you want to do something for a minute or two, each of
13 you feel free to do so. We've had more than an adequate
14 opportunity to talk about the case. You centered in on it
15 well in your briefs and pretrial filings. I think we know
16 why we're here. But if you have a couple of points you want
17 to make, Mr. Stewart, and point out to me, feel free to do
18 so. Mr. Cole can then do likewise.

19 MR. STEWART: Your Honor, I don't have anything
20 prepared. I would simply emphasize the points that we do
21 seek to make here with respect to the constitutional
22 violations that there was an extraordinary relationship
23 developed between prosecution and these witnesses, the kind
24 of relationship you do not see ordinarily in any
25 investigation, and that there were in improprieties that just

1 ran through the entire investigation and those will be laid
2 bare today. And we'll leave that to the presentation of the
3 evidence.

4 THE COURT: Okay. Mr. Cole, anything, sir?

5 MR. COLE: Your Honor, my only response is, it's
6 not so, and the matters which are alleged, even if they were
7 true, would not have had any effect on the verdict in the
8 matter and therefore the motion must be denied.

9 THE COURT: Okay. Gentlemen, thank you. Your
10 first witness, please.

11 MR. STEWART: Petitioner would call John Baltar.

12 THE COURT: The affidavit was in your --

13 MR. STEWART: It was submitted.

14 THE COURT: I've got it. Thank you.

15 JOHN BALTAR, having first been duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION BY MR. STEWART:

18 Q. Would you state your name, please?

19 A. John D. Baltar.

20 Q. And where do you live?

21 A. In Jackson, Mississippi.

22 Q. And what is your business?

23 A. I'm in real estate development, consultant work.

24 Q. Are you self-employed?

25 A. Yes, sir.

1 Q. Could you just describe briefly your educational
2 background?

3 A. I finished Biloxi High in 1954, finished University of
4 Southern Mississippi in 1957, and I've had some graduate
5 courses since then.

6 Q. Could you describe your employment background since you
7 graduated from college?

8 A. Yes, sir. I was employed with Sears Roebuck and Company
9 while I was going to college and I continued for some five
10 years.

11 Q. In what position?

12 A. Well, I was Assistant Credit Manager and then I was a
13 Management Trainee and Personnel Manager of Little Rock,
14 Arkansas, stores when I left, went back to Mississippi.

15 Q. After Sears, what did you do?

16 A. I went to work for Mississippi Power Company in the
17 Engineering Department and I was Assistant Division Manager.
18 And I left in 1965 and went to work as Owner Relations
19 Manager of Dee's Chevrolet Oldsmobile in Biloxi. And then in
20 '68 I went in business for myself as an automobile leasing
21 and rental agent.

22 Q. How long were you in that business?

23 A. Until 1976. I was appointed Assistant to the State
24 Treasury in Mississippi at that time. And I returned to the
25 Coast in 1978 and went in the real estate development and

1 consulting business.

2 Q. That's back in Biloxi?

3 A. Yes, sir.

4 Q. All right. Did there come a time when you went to work
5 for Fairchild Construction Company?

6 A. Yes, sir. I did a good bit of consulting for Fairchild
7 over the years. And then in 1983, I'm pretty sure November
8 of '83, I went to work in the office itself. Mr. Fairchild
9 wanted me in Hattiesburg.

10 Q. What was your position there?

11 A. I was an Administrative Assistant to Mr. Wiley
12 Fairchild.

13 Q. And what were your responsibilities?

14 A. Well, they were varied. I trouble shot, I dealt with
15 most of the attorneys, helped in all the administrative
16 work. I developed apartments, motels, and so forth. And Mr.
17 Fairchild had formed a separate company to build these. And
18 I would get the projects -- we retained the projects, HUD
19 projects, Farmers Home, and regular financing. I also did
20 lobbying at the State Capitol.

21 Q. And had you lobbied previous to your work with Fairchild
22 Construction?

23 A. Yes, sir. Since about 1964. And I served as Assistant
24 Secretary of the State Senate in 1971.

25 Q. When did you leave Fairchild Construction?

1 A. May of this year, sir, 1988.

2 Q. And why did you leave?

3 A. Well, I wanted to develop on my own but there were some
4 problems in our organization and we weren't making a profit
5 or they weren't making a profit on the jobs that I gave them,
6 whatever they were, and so they owed me a good bit of money.

7 Q. While you worked at Fairchild Construction, did you
8 become involved in the Federal investigation of Wiley
9 Fairchild?

10 A. Yes, sir. In fact, it was April 6, 1984, when I became
11 involved in it.

12 Q. How did that arise?

13 A. Mr. Wiley called me one night. It was my daughter's
14 birthday. And he was quite upset. And he's kind of hard to
15 talk with late in the afternoon after 5:00 o'clock. So he
16 was telling me that he was greatly upset about things being
17 in the news about his son and that he felt like Bud Holmes
18 and Carroll Ingram were trying to blackmail him and he said
19 don't you know George Phillips real well, and I said yes,
20 sir.

21 Q. Who is George Phillips?

22 A. He was the United States Attorney, Southern District.
23 So he asked me if I'd call George and relay that message.

24 Q. You mentioned Mr. Fairchild could be hard to talk to in
25 the evening. What did you mean by that?

1 A. Well, he calls it getting real relaxed every afternoon.

2 THE COURT: Okay. He drank. I don't need too much
3 of that. It's okay.

4 Q. Did you contact Mr. Phillips as you had been requested?

5 A. Yes, sir. I called him Monday morning when I came to
6 Jackson.

7 Q. All right. Did you have any firsthand knowledge
8 concerning the Drew Fairchild case, which is the case he
9 asked about, prior to that point, April of 1984?

10 A. No, sir. I really couldn't understand Mr. Fairchild
11 that night and I had no knowledge of it. So when I called
12 George I asked him if he had any knowledge of the Drew
13 Fairchild case and he said yes, he did, from Hattiesburg.

14 Q. Did you have any knowledge at that point concerning --
15 firsthand knowledge about Judge Nixon's investment with Wiley
16 Fairchild or the circumstances surrounding that investment?

17 A. No, sir. I knew both gentlemen but didn't know anything
18 about the combination.

19 Q. I want to move ahead a little. Were you aware that
20 Mr. Fairchild testified before the Grand Jury in July of
21 1984?

22 A. Yes, sir, I was there. I was not in the jury room, but
23 I was with Mr. Fairchild.

24 Q. And did anyone else accompany him on that day to the
25 Grand Jury?

1 A. I don't believe so, sir.

2 Q. I want to move on to the time of the Federal indictment
3 of Mr. Fairchild in September of 1984. Do you recall what
4 the charges were, if any, against him?

5 A. Yes, sir.

6 Q. And what were those?

7 A. One charge was illegal gratuity and one charge was
8 perjury.

9 Q. Did there come a time following that indictment when you
10 participated in conversations with Federal agents or
11 attorneys concerning possible plea arrangements or dismissal
12 of those charges against Mr. Fairchild?

13 A. Yes, sir. There was a good many conversations.

14 Q. Are you a lawyer?

15 A. No, sir.

16 Q. All right. Why did you become involved in those plea
17 conversations?

18 A. Well, I worked for Mr. Fairchild and he told me to get
19 involved in it.

20 Q. Do you recall when those plea conversations began?

21 A. Well, sir, in October of 1984, November of 1984.

22 Q. Are you able to put a precise date on it?

23 A. Well, we made a proffer on November 1st but there was
24 discussions before that.

25 Q. Was Reid Weingarten involved in those conversations?

1 A. Yes, sir.

2 Q. And what was his position at the time?

3 A. He was investigating in the Southern District for the
4 Government.

5 Q. In the early plea negotiations, generally, who was
6 involved representing Mr. Fairchild other than you?

7 A. In the plea negotiations, Mr. Wallace Gunn in the
8 proffer and then Barry Hess from Mobile became involved in
9 the plea negotiations.

10 Q. Mr. Hess is an attorney?

11 A. Yes, sir, from Mobile.

12 Q. Who was involved -- with whom did you deal on the
13 Government's side other than Mr. Weingarten?

14 A. Mr. Weldon Kennedy, Mr. White-Spunner, a Mr. Lawless,
15 and a Mrs. Jan Little.

16 Q. Throughout the investigation, was there any single
17 person with whom you dealt with primarily or who had primary
18 responsibility?

19 A. I understand Mr. White-Spunner had primary
20 responsibility of the investigation but Mr. Weingarten was in
21 charge.

22 Q. Where did these conversations occur?

23 A. Some at our office, some in Jackson at the Federal
24 Building, some at Hattiesburg in the Federal Building there.

25 Q. And what position was taken by the Federal Government in

1 these early conversations?

2 A. Are you talking about in the plea bargain type?

3 Q. Plea conversations, yes, sir.

4 A. Well, they led us to believe that they were going to let
5 Mr. Fairchild's charges drop if he could give a "smoking gun"
6 was what Mr. Weingarten called it, that would involve Judge
7 Nixon, and it didn't turn out that way.

8 Q. What was Mr. Fairchild's position in response to that
9 Government position?

10 A. Well, sir, he was very anxious, of course, to get the
11 charges against him dropped. He felt he had done nothing
12 wrong with the Judge. And he also was anxious to have some
13 stability in his son's case. His son had been in problems
14 before.

15 Q. All right. Was any effort made by you or others
16 employed by Mr. Fairchild or by Mr. Fairchild to find a
17 "smoking gun"?

18 A. Yes, sir. I had to rely on Mr. Fairchild because I
19 didn't -- I wasn't there at the time. But he came up with
20 several things that he felt were "smoking guns" and we
21 presented them to him.

22 Q. Do you recall any of those attempted "smoking guns"?

23 A. Yes, sir. There was an attorney named Bill Porter who
24 had been involved with Drew and Bud Holmes. Mr. Fairchild
25 came up with a story that Bud had killed Bill Porter and he

1 was in the Gulf and they couldn't find his body.

2 There was a thing about a Preacher Shows that Mr.
3 Fairchild said had come to him seeking help in getting a
4 sentence reduced by Judge Nixon and that he had sent Preacher
5 Shows to Bud Holmes because he knew Bud knew the Judge and he
6 had heard he could talk to him about it.

7 Q. Did you present these attempted "smoking guns" to the
8 Government?

9 A. Yes, sir.

10 Q. Were there any other -- I'm sorry, I don't mean to cut
11 you off.

12 A. No, sir. Go ahead.

13 Q. Were there any other attempted "smoking guns" that Mr.
14 Fairchild came up with?

15 A. Yes, sir. Mr. Fairchild came up with a telephone call
16 from Bud Holmes one night after he had talked with Judge
17 Nixon and he said that Bud called him from his camp, I think
18 they call it, not camp but farm over in Petal, Runnelstown,
19 somewhere. And said that Bud put the Judge on the phone and
20 the Judge told Mr. Fairchild that matter we talked about this
21 afternoon, everything's going to be all right. And then Bud
22 got back on and said Mr. Fairchild, I want you to know that
23 this man's my friend, anything that he tells me to do, I do
24 it.

25 Q. Now, did Mr. Fairchild explain to you the context, what

1 those statements were supposed to refer to on that telephone
2 call?

3 A. Yes, sir. He said that he had talked with Judge Nixon
4 in his office earlier that day and told the Judge that Bud
5 Holmes was trying to blackmail him over his son's involvement
6 in drugs.

7 Q. I'd like you to try to set the scene. Where were you
8 when Mr. Fairchild made these statements to you?

9 A. Which statements?

10 Q. These first statements where he describes to you the
11 phone call. Where were you?

12 A. In the car returning from Jackson. I'm not sure exactly
13 where we were. I've been trying to find the date of that,
14 the date of some of the things that I have not been able to
15 find because a lot of it happened when I was in or out of the
16 Ramada Coliseum and they had a fire a couple of months ago
17 that burned their laundry and storeroom.

18 THE COURT: Ramada what?

19 A. Coliseum.

20 Q. So you've been unable to find those records to determine
21 specific dates?

22 A. Yes, sir. But I know it was on a trip -- Mr. Gunn, Mr.
23 Fairchild and I were in the car and he came up with this
24 latest story.

25 Q. Who was driving?

1 A. I was driving, sir.

2 Q. Now, do you recall with respect to the date of the
3 proffer that you've referred to, November 1, when this
4 conversation with Mr. Fairchild was in the car? Was it
5 before or after?

6 A. It was before because we felt like that might have been
7 the "smoking gun".

8 Q. All right. Do you know how long before?

9 A. No, sir, but I don't think it was but a few days, you
10 know. Probably within a two-week period, maybe less than
11 that, because we started making contact with the Government
12 to try to arrange a meeting.

13 Q. Now, in his description of that phone call, did Mr.
14 Fairchild indicate who had placed that call from Bud Holmes'
15 farm?

16 A. Bud Holmes called him.

17 Q. All right. And was Mr. Fairchild able to place when the
18 meeting with Judge Nixon and subsequent phone call had
19 occurred?

20 A. He said the phone call came that night and he had talked
21 with Judge Nixon in his office earlier that day and he placed
22 it with the time that Bob Royals, who was his son's partner,
23 had come in to see Mr. Fairchild. He said it was on a Monday
24 morning, Mr. Fairchild did, and said that he had been -- Mr.
25 Royals had been on a trip with Bill Porter to visit a fellow

1 by the name of Joe Chrone, who was in jail at Maxwell Air
2 Force Base. And it's never been really established because
3 we couldn't tie the, you know, the visit with the dates.

4 Q. Did you attempt to check prison records?

5 A. Yes, sir.

6 Q. To see if you could correlate this to some other events
7 in the case?

8 A. Yes, sir, I did. And they told me that was private
9 records and so I asked the Agents Lawless and Ken
10 White-Spunner to see if they could obtain the date of the
11 visit.

12 Q. Were they able to do so?

13 A. They said they weren't, sir.

14 Q. Now, did you or Mr. Gunn have any response to Mr.
15 Fairchild when he described this meeting and phone call to
16 you in the car?

17 A. Well, sir, we, of course, were both kind of shocked
18 because we kept getting new stories all the time. But we
19 kind of looked at each other and began asking questions about
20 it.

21 Q. Did you conclude whether or not this should be or
22 recommend whether or not this should be presented to the
23 Government?

24 A. Yes, sir. Anything that was believable, we wanted to
25 present to them.

1 Q. And did you have any conversation concerning whether
2 this might be the "smoking gun"?

3 A. Yes, sir. Both Mr. Gunn and I thought it would be the
4 "smoking gun".

5 Q. All right. This episode was then described -- the
6 meeting and the phone call from Bud Holmes' farm was then
7 described to the Federal Government or to the agents?

8 A. Shortly afterward, sir.

9 Q. Within a matter of a day or two?

10 A. Yes, sir. And then when we came in for the proffer we
11 kind of went over it again.

12 Q. You described this proffer. Where did that occur?

13 A. Jackson in the Federal Building on Roach Street, down
14 one side of it. I don't know the other street.

15 Q. Do you recall what time of day that meeting began?

16 A. We kind of had the pre-meeting about 1:00 o'clock until
17 maybe 3:00 or 3:30 and then we went into another room and had
18 an official meeting.

19 Q. Who was present at the pre-meeting?

20 A. Well, it was -- I was there and Mr. Gunn was there and
21 Jan Little and Weldon Kennedy, Mr. Weingarten. I think Ken
22 White-Spunner.

23 Q. Were they all there at the beginning?

24 A. I'm not sure if Ken was in there. He could have been in
25 there and then not in the other meeting.

1 Q. All right. Do you recall whether they were all there at
2 the beginning of the meeting or if anyone came late?

3 A. Mr. Weingarten came in late. I believe his plane was
4 late or he came in a little late.

5 Q. Now, what was your goal and Mr. Fairchild's goal in
6 going to that meeting? What were you attempting to achieve?

7 A. Well, we were hoping for them to tell us that the
8 charges against Mr. Fairchild would be dropped and that his
9 son's case would come to an end.

10 Q. Had that been discussed with the Government that that
11 was a possibility?

12 A. Yes, sir.

13 Q. That's what you were seeking?

14 A. That's what we were working for, yes, sir.

15 Q. What happened during the pre-meeting? What happened
16 first the best you can recall?

17 A. Well, we just kind of discussed the situation and, you
18 know, Bob Royals coming out there and the Judge's telephone
19 call and the Preacher Shows thing, the things that Mr.
20 Fairchild was offering to them in return for his dismissal
21 and his son's help.

22 Q. What was Mr. Weingarten's reaction to the description
23 that was made of these events?

24 A. He was interested in them. He said some of the things
25 were not accurate and that in order to be able to get a plea

1 Mr. Fairchild was going to have to remember that certain
2 things happened at certain times, different times from what
3 he actually had in his mind.

4 Q. Was any reference made to whether a "smoking gun" had
5 been provided?

6 A. Yes, sir.

7 Q. And what was that reference?

8 A. Said it wasn't a "smoking gun".

9 THE COURT: Said what? I'm sorry.

10 A. Said it wasn't a "smoking gun".

11 Q. Now, you mentioned Mr. Weingarten referred to certain
12 facts. Did he make any comment at that time concerning when
13 the investment or the oil and gas investment with Judge Nixon
14 had occurred, the date or the timing of that event?

15 A. Yes, sir.

16 Q. And what did Mr. Weingarten say about that fact?

17 A. Mr. Fairchild had been saying that it occurred before
18 his son's drug bust. And Mr. Weingarten said it had to have
19 occurred after the son's drug bust and before the son's case
20 was passed to the files the first time.

21 Q. Did Mr. Weingarten make any comment concerning when the
22 phone call -- this meeting with Judge Nixon or phone call
23 from Bud Holmes' farm had occurred, that fact?

24 A. Yes, sir. He said it had to occur before the passing to
25 the files. That that's when Bud passed it to the files.

- 1 Q. When Bud passed what to the files?
- 2 A. The son's indictment, I guess it was.
- 3 Q. And did Mr. Weingarten make any comment concerning the
- 4 fact as to who had placed the phone call to him that night
- 5 from Bud Holmes' farm?
- 6 A. Yes, sir. He seemed to think that it was Judge Nixon
- 7 rather than Bud Holmes.
- 8 Q. Did he state that to Mr. Fairchild as a fact?
- 9 A. Yes, sir. He said that's what they felt.
- 10 Q. Did Mr. Weingarten at that time state whether the
- 11 charges might be dismissed or whether a plea bargain was
- 12 possible?
- 13 A. He said that it was possible and, you know, that they
- 14 would take it under advisement.
- 15 Q. What was Mr. Fairchild's reaction to the statements by
- 16 Mr. Weingarten on these facts that you just described? Did
- 17 he make any response?
- 18 A. Yes, sir. He was very hopeful when we went up, we all
- 19 were, that he would be, you know, told if he made this plea
- 20 bargain that everything would be dropped against him and yet
- 21 they didn't do it. And I was to go back the next day and,
- 22 you know, we had hope again.
- 23 Q. Let me focus here a little better. I think my question
- 24 was too open-ended.
- 25 A. Okay.

1 Q. In this pre-meeting, I take it during -- is it during
2 the pre-meeting with Mr. Weingarten who made these comments
3 about the facts?

4 A. Yes.

5 Q. During this pre-meeting, did Mr. Fairchild respond in
6 any way to Mr. Weingarten's statements concerning these
7 facts?

8 A. Yes, sir. He more or less went along. Said, you know,
9 he was kind of -- would get confused and everybody would
10 refresh his memory, you know, that he could get it right in
11 line.

12 Q. Did he attempt to adopt the facts that Mr. Weingarten
13 had stated to him?

14 A. Yes, sir, he did.

15 Q. Did he give any explanation as to why he was adopting
16 those as to whether they were true or not? Mr. Fairchild I
17 mean.

18 A. No, sir. He would say, you know, we're going to get
19 this straight, you know, because he was not used to telling
20 the story that way.

21 Q. Mr. Baltar, I'd like to show you what has been marked as
22 Exhibit 12, Petitioner's Exhibit 12. Have you seen that
23 document before?

24 A. Yes, sir.

25 Q. And what is it? Do you know what it is?

1 A. This is a transcript of the reporting of that meeting
2 for the proffer.

3 Q. Have you reviewed that document prior to testifying
4 here?

5 A. Yes, sir.

6 Q. Does it appear to be an accurate version as to what went
7 on during that proffer as far as you can recall?

8 A. Yes, sir. This is not of the early meeting, this is
9 just of the late meeting.

10 Q. All right.

11 A. First meeting was held in Mr. Kennedy's office.

12 Q. Do you know what the room was that the second meeting
13 occurred in?

14 A. No, sir. It was a very small room with a table and a
15 few chairs. I don't know.

16 Q. I'd like to direct your attention to the sixth page of
17 that exhibit. There is a passage there right at the top
18 under Fairchild at the end of which Mr. Fairchild ends saying
19 I'm getting confused. I wanted to ask you if you recall that
20 point in the proffer.

21 A. Yes, sir.

22 Q. What was Mr. Fairchild's manner at that point when he
23 was talking?

24 A. Confused. He was trying to get the story straight that
25 he was supposed to tell on the tape.

1 Q. Did Mr. Fairchild at any point complain that he could
2 not give the testimony that the Government had -- that Mr.
3 Weingarten had stated to him, that he could not state those
4 facts?

5 A. Well, it was just some facts, yes, sir, but we, you
6 know, would eliminate them or change them, make them
7 comfortable with him. He has a different way of saying
8 something.

9 Q. All right. Mr. Baltar, I'm through with that document
10 for right now.

11 After the tape was turned off, do you recall whether
12 there was any further discussion?

13 A. No, sir, I don't. I think there was just some small
14 talk.

15 Q. When was your next contact from the Government on this
16 matter?

17 A. The next day.

18 Q. And what happened then?

19 A. I came back up to Jackson and --

20 Q. Do you recall why you came back?

21 A. Well, I was asked to come back by the Government, just
22 me. And I talked, I think, with Mr. Weingarten and Mr.
23 Kennedy, and Mr. White-Spunner, and they told me that they
24 weren't going to be able to dismiss the charges.

25 Q. Did they explain to you why they wanted to talk to you

1 and not to Mr. Fairchild's attorney?

2 A. No, sir.

3 Q. Had you ever handled plea negotiations in a criminal
4 case before?

5 A. No, sir, I've never been involved.

6 Q. Mr. Baltar, I'd like to show you a document that's been
7 marked as Petitioner's Exhibit 16. It appears to be an FBI
8 memorandum that was prepared in this case. Have you had a
9 chance to review that in the last few days?

10 A. Yes, sir.

11 Q. And to the best of your recollection is that an accurate
12 description of the meeting that occurred between you and the
13 Government officers on the date following the proffer?

14 A. Yes, sir. To the best of my knowledge these things did
15 happen.

16 Q. I want to ask you about the statement that was made to
17 you that day that the Government was not able to dismiss the
18 charges against Mr. Fairchild. Did they explain to you why
19 they were not able to?

20 A. They said that, you know, they were just not "smoking
21 guns", anything that we had presented was not a "smoking
22 gun".

23 Q. Did anyone state that they were unable to verify what
24 Mr. Fairchild had described on the previous day?

25 A. Yes, sir. They said that, you know, the phone call from

1 Judge Nixon at the time Mr. Fairchild said it happened, Joe
2 Chrone's visit was not verifiable.

3 Q. I'm through with that for right now.

4 Was there any conversation, and you made reference to
5 this previously, during this time period with Mr. Reid
6 Weingarten concerning the legal status of Drew Fairchild and
7 his criminal charges?

8 A. Yes, sir. He was very fond of Drew and said that he
9 would be glad to help him and that he would help with his
10 charges if the State gave us much problems with it. He was
11 empathetic to the fact that Drew had just been dragged
12 through the State Court so many times.

13 Q. Did you view this exchange as any part of the plea
14 negotiations that were going on at that time?

15 A. Yes, sir. That was part of the negotiation. In other
16 words, Mr. Fairchild wanted help for Drew in addition to
17 dismissing counts on him.

18 Q. Was a plea bargain ultimately reached between Mr.
19 Fairchild and the Government?

20 A. Yes, sir.

21 Q. Did a lawyer from Mr. Wiley Fairchild negotiate the
22 final written agreement?

23 A. Yes, sir.

24 Q. Do you recall the basic terms of the plea agreement?

25 A. Well, sir, it was the -- like stated in here that the

1 perjury charge would be dropped and illegal gratuity would be
2 -- Mr. Fairchild would have to plead guilty to that.

3 Q. Do you recall any reference to the resolution that what
4 the Government would do with respect to sentencing?

5 A. They would recommend that he not get any time and he
6 did, they did.

7 Q. Was that recommendation contingent on anything that you
8 can recall?

9 A. No, sir. Just from Mr. Fairchild's cooperation.

10 Q. All right. To the best of your recollection and
11 knowledge were there any items that were not included in the
12 written plea agreement that were the subject of negotiation
13 and agreement?

14 A. Well, it was an informal agreement with Mr. Weingarten.

15 Q. Can you describe that?

16 A. Well, I believe it was that, you know, he would not be
17 given any time, that Drew would be helped in his case when it
18 came up.

19 Q. All right.

20 A. They were going to try to talk the State into just
21 dropping it back, you know, to what it was originally agreed
22 with George Phillips.

23 Q. Did you make any memorandum concerning an informal
24 agreement or your understanding of an informal agreement that
25 was reached at that time?

1 A. When Mr. Hess called me, we had already had it up here,
2 but then when Mr. Hess called me and told me about the time
3 for the meeting, or the plea agreement meeting in New
4 Orleans, that I asked him what was the crux of it and he told
5 me what the informal agreement was.

6 Q. All right. I'd like to show you what has been marked as
7 Petitioner's Exhibit 17. There's handwriting on both sides
8 of the page. Can you identify the handwriting?

9 A. Yes, it's mine.

10 Q. And on the side of the page where there are notes all
11 the way down the page, does that have anything to do with the
12 Fairchild case? It's the other side from what you're looking
13 at now. Do those notes have anything to do with the
14 Fairchild case?

15 A. No, sir.

16 Q. All right. Turning to the other side, if I can direct
17 your attention to below where it appears to say 3rd Floor,
18 could you read your notation below that?

19 A. What, sir?

20 Q. Below where it says 3rd Floor, Judge Carr. Notation
21 below that.

22 A. Informal agreement. That's where I wrote down what the
23 informal agreement was.

24 Q. Could you read that?

25 A. Informal agreement: If cooperation provides more than

1 he anticipates or if as his investigation goes forward and
2 proves that, that Wiley is the victim, he would dismiss the
3 count.

4 Q. Now, was this consistent with your understanding of the
5 informal agreement previous to your phone call with Mr. Hess?

6 A. Yes, sir.

7 Q. On which you made this notation?

8 A. Right. But, see, Mr. Hess had talked with him, he had
9 called Mr. Hess or Mr. Hess had called him and had set the
10 date and I just wanted to make sure it was the same
11 agreement.

12 Q. Did you inform Mr. Fairchild of this informal agreement?

13 A. Yes, sir.

14 Q. Was Mr. Fairchild ever present at a time when Mr. Hess
15 described the informal agreement?

16 A. Yes, sir.

17 Q. And where was that?

18 A. Here in Jackson. And Mr. Fairchild asked him, I want
19 that written down. And Barry told him, said, he just can't
20 write that down. Weingarten said he can't write it down.

21 Q. Did you consider the Prosecutor's statements, this
22 informal agreement, as part of the plea bargain that was
23 reached with the Government?

24 A. Yes, sir.

25 Q. Did Mr. Fairchild take that view as well?

1 A. Yes, sir.

2 MR. COLE: Objection. I'd ask that be stricken
3 from the record.

4 THE COURT: I'll sustain.

5 Q. Did you have any involvement in helping Mr. Fairchild to
6 prepare to testify before the Grand Jury on November 28th,
7 two days after his guilty plea was entered?

8 A. Yes, sir, I sure did.

9 Q. Did you have any conversation with Mr. Reid Weingarten
10 concerning that Grand Jury testimony before the testimony
11 occurred?

12 A. Yes, sir. Mr. Weingarten told me he was, you know, kind
13 of scared about Mr. Wiley getting up on the stand and asked
14 me if I would make sure that he testified to the facts as Mr.
15 Weingarten needed them to be testified to and could I hold
16 him in line. It was only two days.

17 Q. Did you attempt to do as Mr. Weingarten had requested?

18 A. Yes, sir, I did.

19 Q. And when you say the facts that Mr. Weingarten needed,
20 did that relate to the facts you described that were covered
21 during the meeting concerning the proffer back on November 17?

22 A. Yes, sir.

23 Q. Now, during these -- did you speak with Mr. Weingarten
24 more than once concerning the Grand Jury testimony that was
25 upcoming?

1 A. Yes, sir. A couple of times. And in New Orleans and
2 here, in Hattiesburg.

3 Q. Did Mr. Weingarten refer to any specific facts again
4 that he wanted to cover during the Grand Jury testimony?

5 A. Yes, sir. He needed two or three things put in certain
6 dates about that the oil deal came after the bust and that
7 the phone call came --

8 THE COURT: This is you and Weingarten talking?

9 A. Yes, sir.

10 THE COURT: No one else?

11 A. No, sir.

12 THE COURT: Go ahead, sir.

13 Q. I'm sorry. You were describing other facts.

14 A. Yes, sir. He wanted to make sure that the date of the
15 oil transfer was after Drew's drug bust. He said that's when
16 it was.

17 Q. Let's take the first date you referred to which is after
18 -- concerning the telephone call from Bud Holmes' farm being
19 before the case passed to the files. Was that consistent
20 with Mr. Fairchild's previous statements?

21 A. No, sir. But you got to understand Mr. Fairchild. He
22 changes sometimes.

23 Q. Now, on the second matter of the dating of the
24 investment approach, the approach concerning the investment,
25 that that approach must have occurred after the drug bust,

1 was that consistent with Mr. Fairchild's previous statements?

2 A. No, sir. Mr. Fairchild first, you know, when he was
3 first telling about it, the reason he put the Judge in the
4 oil deal was that he liked to have influential friends. And
5 that he gave a story about Cotton Caldwell who was here in
6 Jackson and Mr. Fairchild had to get him off the golf course
7 one Sunday because he needed to raise several million dollars
8 to buy into the Sea of Mark. And that he felt that Judge
9 Nixon would have friends such as that if he ever had such an
10 occurrence come up.

11 But then Mr. Weingarten said that it had to occur after
12 the drug bust and that he was trying to get the Judge so that
13 he would be able to help in his son's case.

14 Q. Now, during these Pre-Grand Jury testimony conversations
15 with Mr. Weingarten, did Mr. Weingarten make any comment
16 concerning the value of the minerals, mineral interests that
17 were sold to Judge Nixon?

18 A. Yes, sir. From the very first.

19 Q. And what was his comment with respect to that fact, Mr.
20 Weingarten's comment?

21 A. Mr. Weingarten said that the Government had proof that
22 they were worth many times what Mr. Fairchild sold them to
23 Judge Nixon for.

24 Q. And was that consistent with Mr. Fairchild's previous
25 statements?

1 A. No, sir. Mr. Fairchild had said and always said that,
2 you know, he made a decent profit, 4,000, 8,000 percent on
3 some of the minerals, but that at the time before the wells,
4 you know, were put on-line, that you just didn't know what
5 the value was going to be. He thought all three wells were
6 going to be real good. But I think just one ended up being
7 any good.

8 Q. Was there any comment made in this Pre-Grand Jury, these
9 Pre-Grand Jury conversations with Mr. Weingarten by Mr.
10 Weingarten concerning who made the phone call from the farm,
11 who placed that call from Bud Holmes' farm to Mr. Fairchild?

12 A. Yes, sir.

13 Q. And what was his comment on that?

14 A. That the Judge placed the telephone call.

15 Q. And was that consistent with Mr. Fairchild's previous
16 recollection?

17 A. No, sir, it wasn't.

18 Q. I want to ask you, Mr. Baltar, did you personally have
19 any knowledge as to what was the true facts with respect to
20 any of these facts?

21 A. Today I still don't know the truth, no, sir.

22 Q. Did you take any steps to prepare Wiley Fairchild for
23 his Grand Jury testimony as Reid Weingarten had requested?

24 A. Yes, sir. I informed him the things he needed to say.

25 Q. And do you recall the procedure by which you did that?

1 A. Well, I fixed him a paper so he could study it with the
2 facts on it that he needed to be sure and cover.

3 Q. And where did you get the information to put on that
4 sheet of paper?

5 A. Well, Mr. Weingarten said these are the things I'm going
6 to ask him and he needs to be able to cover.

7 Q. I want to show you what's been marked as Petitioner's
8 Exhibit 19 and ask you if you can identify that.

9 A. Yes, sir.

10 Q. Is that in your handwriting?

11 A. Yes, sir, it is.

12 Q. And what is Petitioner's Exhibit 19?

13 A. Well, there's one page on the front of that that has
14 some notes that I had made, dates and so forth. And then on
15 the second page, which is numbered Page 1, I don't know if it
16 was supposed to be stapled together or not, that's the
17 beginning of the drug bust by Richard Burns out of West Palm
18 Beach. And I went right on through to September the 6th of
19 '84 when Mr. Wiley was indicted.

20 Q. Where did you get the information that you entered in
21 this Petitioner's Exhibit 19?

22 A. I went down to Mr. Gunn's office and we went through all
23 of the Court proceedings and all of the indictments and so
24 forth and came up with the facts.

25 Q. I'd like to show you now what has been marked as

- 1 Petitioner's Exhibit 18 and ask if you could identify it.
- 2 A. Yes, sir.
- 3 Q. What is that?
- 4 A. This --
- 5 Q. Can you identify the handwriting first?
- 6 A. Yes, sir. That's my handwriting, yes, sir.
- 7 Q. And what is Petitioner's Exhibit 18?
- 8 A. These are the questions that Mr. Fairchild -- the
- 9 answers that Mr. Fairchild needed to give about the dates and
- 10 so forth that these things occurred.
- 11 Q. Where did you get the information that is included in
- 12 Petitioner's Exhibit 18?
- 13 A. Well, the dates I had, you know, here, and I just
- 14 checked them off.
- 15 Q. By here you mean Petitioner's Exhibit 19?
- 16 A. 19, yes, sir. And I took the ones that were pertinent,
- 17 reduced it to just those items, and gave this to Mr.
- 18 Fairchild to study.
- 19 Q. I'd like to direct your -- was there any highlighting or
- 20 emphasis? We have only a xerox of this particular document.
- 21 As you recall the original and perhaps can see in this
- 22 document, was there any highlighting or emphasis dealing with
- 23 any of these items?
- 24 A. Yes, sir, several of them. The most important things,
- 25 the one that Mr. Weingarten said he had to, you know, get

1 right.

2 Q. Can you pick those out today just looking at it?

3 A. Yes, sir.

4 Q. By the quality of the xerox?

5 A. It shows on there, yes, sir.

6 Q. Can you point them out on the first page?

7 A. Well, between August 4th and November the 19th, which
8 was the airport drug bust August 4th of 1980 and November
9 19th of 1980, that would be between those two dates that
10 Wiley was contacted by Carroll Ingram, put Judge Nixon in an
11 ordeal. Mr. Weingarten felt that, you know, because of
12 Drew's problem that that's why he was contacted.

13 Q. Now, did you get any of that information there
14 concerning where it's written between these two dates, did
15 that come from Mr. Gunn's file or anything Mr. Fairchild had
16 told you?

17 A. No, sir.

18 Q. Where did you get that?

19 A. Mr. Weingarten.

20 Q. And by highlighting, what color highlighter would you
21 use?

22 A. Yellow.

23 Q. Working down the page then is there another entry that
24 is highlighted?

25 A. February 26, 1981, Wiley signed three oil deeds to Judge

1 Nixon. And then August 26 of 1981, Drew was indicted by
2 Mississippi. Wiley called Bud Holmes to hire Bill Porter.

3 Q. On the next page?

4 A. Between October 12th of 1982, and December 23 of 1982,
5 we put the visit from Bob Royals after he and Bill Porter had
6 been to Maxwell Air Force Base to visit Joe Chrone and that
7 Wiley called Carroll Ingram to have Judge Nixon visit him and
8 Carroll brought Judge out to Wiley's office and Wiley
9 received a call from Judge Nixon and Bud Holmes about 7:20
10 p.m.

11 Q. Now, the arrows on the left and the entry between these
12 two dates that's there, what did that refer to? What does
13 that mean?

14 A. Well, Mr. Fairchild had to learn that that's where he
15 had to put these occurrences, between those two dates. It
16 was kind of hard for him to remember that because they were
17 different from the dates he had given.

18 Q. Now, did you get that information from Mr. Gunn's file
19 or anything Mr. Fairchild had told you?

20 A. No, sir.

21 Q. Where did you get that information from?

22 A. From Mr. Weingarten.

23 Q. Did you review Exhibit 18 with Mr. Fairchild, you
24 personally? Did you go over it with him?

25 A. You mean back in the Grand Jury?

1 Q. Yes, sir.

2 A. Yes, sir. I drew it out and gave it to him. I guess
3 that's where the original is. He's probably still got it. I
4 gave it to him to study because it was only a day or so after
5 that. He wanted to be able to get it right.

6 Q. Did any attorney participate in this effort on behalf of
7 Wiley Fairchild to prepare for the Grand Jury testimony?

8 A. No, sir.

9 Q. I'm asking of your own knowledge. Do you know whether
10 he spoke to any attorney concerning Mr. Fairchild's testimony
11 before the Grand Jury?

12 A. No, sir. He could have, but I don't have any knowledge
13 of it.

14 Q. Did you accompany Mr. Fairchild to that Grand Jury
15 appearance?

16 A. Yes, sir.

17 Q. I'm done with that exhibit for right now.

18 Was there any attorney present for Mr. Fairchild on that
19 occasion?

20 A. No, sir.

21 Q. What was Reid Weingarten's attitude following Mr.
22 Fairchild's Grand Jury testimony concerning how the testimony
23 had gone?

24 A. He felt --

25 MR. COLE: Objection to attitude.

1 THE COURT: Sustained.

2 Q. Did Mr. Weingarten state anything to you concerning what
3 Mr. Fairchild -- how Mr. Fairchild's testimony had gone?

4 A. He was very pleased. Of course, he had told me that we
5 got to go in there, we got to straighten up these things that
6 he said in the first Grand Jury. And we got to get this
7 right. And he was very pleased that it was done just like he
8 asked for it to be.

9 Q. Following this Grand Jury appearance, were there
10 subsequent interviews of Wiley Fairchild by Federal agents or
11 attorneys?

12 A. After this?

13 Q. After the Grand Jury appearance.

14 A. Yes, sir.

15 Q. Did you attend those?

16 A. Yes, sir.

17 Q. During those meetings or discussions, was there any
18 reference ever to Drew Fairchild's legal situation?

19 A. Yes, sir.

20 Q. What was the substance of the conversation?

21 A. Well, Mr. Weingarten was going to talk to Glenn White,
22 who was the District Attorney, and try to get them to take
23 care of Drew's situation, and I think he did.

24 Q. Do you know that of your own firsthand knowledge?

25 A. He told me that he went down and talked to Glenn. I

1 think he had a letter from Glenn or he wrote a letter to
2 Glenn.

3 Q. I want to move to the spring of 1985 now. With respect
4 to Drew Fairchild, did there come a time when you attempted
5 to assist Drew Fairchild in connection with the pending drug
6 charges against him in State Court?

7 A. Yes, sir. I believe Judge McKenzie made a statement on
8 television one night that Drew was going to get the full
9 five-year sentence in Parchman. And so Mr. Fairchild called
10 me and wanted me to get Drew down to Barry Hess. Karl Kepper
11 was handling Drew's case at that time.

12 Q. Where is Mr. Kepper located?

13 A. In Hattiesburg.

14 Q. And where is Mr. Hess's office in?

15 A. Mobile, sir. So I called Barry and made an appointment
16 with him and took Drew down to Barry Hess's office and we
17 called or he called Mr. Weingarten.

18 Q. Were you present when that call was placed to Mr.
19 Weingarten?

20 A. Yes, sir. Drew and I were both present.

21 Q. From what -- I just can ask about what you heard on that
22 phone call or heard about it afterwards from Mr. Hess. Were
23 you aware whether an agreement was reached between Mr. Hess
24 and Mr. Weingarten concerning what was to be done?

25 MR. COLE: Objection. I think that's a little

1 broad.

2 THE COURT: Is Hess going to testify?

3 MR. STEWART: Yes, he is.

4 THE COURT: I don't think we need it. I'll
5 sustain.

6 Q. Did you ever talk directly to Reid Weingarten concerning
7 the Federal indictment of Drew Fairchild?

8 A. Yes, sir.

9 Q. And did Mr. Weingarten explain to you why he had
10 indicted Drew Fairchild?

11 A. Yes, sir. He indicted Drew because we felt like Drew
12 was going to get the worst scenario possible from the County
13 Judge or Circuit Judge, or we knew -- he had stated publicly
14 on television -- and that he had a fondness for Drew and he
15 thought Drew had been drug around through the State Courts
16 long enough and that he wanted to help Drew in response to
17 Mr. Fairchild's request, that he would indict Drew and we set
18 it up where he would indict him right before the Grand Jury
19 was going to meet or, you know, he was going to -- we were
20 going to be there right before the Grand Jury.

21 Q. You referred to Mr. Weingarten saying he had done it in
22 response to Mr. Fairchild's request. It's sometimes
23 confusing because there's more than one Mr. Fairchild. Which
24 Mr. Fairchild's request was he referring to?

25 A. Wiley Fairchild. I believe the Judge wasn't going to be

1 there at that Grand Jury meeting that time that they were
2 going to have, but as I recall, Barry, just hearing him talk
3 to Mr. Weingarten, Barry said they needed to sentence him
4 right away and so he arranged for the Judge to be there.

5 Q. Do you mean sentence him or take a plea?

6 A. Take a plea, whatever you go down from the Grand Jury.

7 Q. All right. Did Wiley Fairchild ever express to you his
8 opinion concerning whether the Federal indictment of Drew was
9 proper or was a good thing or a bad thing?

10 A. Well, it was a good thing.

11 Q. Did he state that to you?

12 A. Yes, sir.

13 Q. I want to move on now to the subject of Mr. Wiley
14 Fairchild's sentencing. Did Mr. Wiley Fairchild ever express
15 to you any concern with respect to the date of his
16 sentencing?

17 A. Yes, sir. It kept being put off. And he kept saying I
18 want to get it over with. And he would ask me to call Mr.
19 Weingarten and get, you know, get his sentencing, get it over
20 with.

21 Q. Did Wiley Fairchild explain to you any reason why the
22 sentencing was not occurring?

23 A. He felt that Mr. Weingarten was trying to hold it over
24 his head.

25 MR. COLE: Objection, Your Honor. He's going into

1 his feelings.

2 THE COURT: I'll sustain.

3 Q. I'm only asking with respect to what he told you.

4 A. He told me --

5 MR. COLE: Again I would object to that. Mr.
6 Fairchild is going to be testifying.

7 THE COURT: I'll allow him to tell him what he told
8 him.

9 Q. You can answer the question.

10 A. Mr. Fairchild told me that Mr. Weingarten was holding
11 this testimony over his head or his testimony against Judge
12 Nixon and that he was going to wait until after Judge Nixon
13 went to trial before he was going to be sentenced and, you
14 know, after Judge Nixon was indicted.

15 Q. Did you contact Mr. Weingarten following Mr. Fairchild's
16 request?

17 A. Yes, sir, I did.

18 Q. And what did you tell Mr. Weingarten?

19 A. First couple of times I just requested he be, you know,
20 brought forward. And then I finally told Mr. Weingarten that
21 Mr. Fairchild said he was going to say whatever he wanted him
22 to say and not to worry about it. He wanted to get his
23 sentence and get it over with.

24 Q. Why did you tell Mr. Weingarten that Mr. Fairchild had
25 said he would say whatever Mr. Weingarten wanted him to say?

- 1 A. I just repeated Mr. Fairchild's request.
- 2 Q. Do you recall when that sentencing occurred?
- 3 A. Yes, sir.
- 4 Q. When was that?
- 5 A. September 19. Date of the '47 hurricane. September 19.
- 6 Q. Did you attend that sentencing proceeding?
- 7 A. Yes, sir, I did.
- 8 Q. Were you present when Mr. Fairchild spoke to Reid
- 9 Weingarten outside of the courtroom?
- 10 A. Yes, sir.
- 11 Q. What statements, if any, do you recall Mr. Fairchild
- 12 made to Mr. Weingarten on that occasion?
- 13 A. Mr. Weingarten was very nice and calmed us down and said
- 14 everything was going to be all right. And Mr. Fairchild said
- 15 well, you know, like I told John, I hope he told you that I'm
- 16 going to say whatever you want me to say.
- 17 Q. Was anyone else present other than the three of you on
- 18 this occasion?
- 19 A. No, sir.
- 20 Q. What was Mr. Weingarten's reaction to that statement?
- 21 A. Fine, sir.
- 22 Q. What had Mr. Weingarten's reaction been to your
- 23 statement when you had made this similar statement to him
- 24 over the phone previously?
- 25 A. Well, he went ahead with the sentencing.

1 Q. Did he say anything to you in particular in response
2 that you can recall?

3 A. Well, he said that he felt he knew Mr. Fairchild now and
4 thought that that was true and that he would.

5 Q. Do you recall ever discussing with Reid Weingarten a
6 problem with Mr. Fairchild's concerning disqualification from
7 Federal contracting due to his conviction in this case?

8 A. Yes, sir. I had several contracts at that time that
9 were HUD contracts and --

10 Q. By HUD you mean the Department of Housing and Urban
11 Development?

12 A. Yes, sir. And each participant has to sign a statement
13 saying that they've never been indicted of a felony. And it
14 was going to hurt -- you know, we weren't going to be able to
15 do the jobs in W. R. Fairchild Construction Company name
16 because Mr. Fairchild was a general partner. So Mr.
17 Weingarten said he thought maybe he could help, that there
18 was a Washington thing, and he thought that there was a way
19 that you could get those things approved. But we couldn't.
20 So we had to form another company to do it.

21 Q. Do you know whether or not he ever did anything to help
22 Mr. Fairchild with respect to that problem with contracting?

23 A. No, sir, I don't. We got a letter up there but, you
24 know, giving us a certain time to do certain things. It
25 wasn't going to help. We just went ahead and formed another

1 company.

2 Q. Did you ever have occasion to discuss with Mr.
3 Weingarten the possibility of a pardon for Wiley Fairchild?

4 A. Yes, sir. Mr. Fairchild wanted a pardon. And
5 immediately after sentencing, serving his time, he asked me
6 to call Mr. Weingarten. And I called him and he said that
7 until after Judge Nixon's trial he couldn't do anything but
8 that he certainly would do anything he could to help Wiley.
9 That I would have to talk to a pardon attorney. And that
10 pardon attorney would come to him and he would have to make a
11 recommendation and he would help but nothing until after
12 Judge Nixon's trial.

13 Q. What did you report to Mr. Fairchild concerning this
14 conversation with Reid Weingarten concerning a pardon?

15 A. That it would have to be after Judge Nixon's trial.

16 Q. I want to shift now to the trial of Judge Nixon and the
17 period immediately before then as well. Did you provide any
18 assistance to Mr. Weingarten in connection with the jury
19 selection in that trial?

20 A. Yes, sir. I wasn't much help but they called me down
21 there.

22 Q. Who called you?

23 A. I believe Mr. White-Spunner or Mr. Lawless called and
24 said Mr. Weingarten wanted me to come down to the office that
25 they had set up down there.

1 Q. And what did you do when you got there?

2 A. Well, they gave me a list of all the people who were
3 prospective jurors, but I did not know any of them.

4 Q. Did you undertake any efforts to find out something
5 about them?

6 A. Yes, sir. I made a couple of calls to people in the
7 areas in which they lived to find out something about their
8 background. I talked to a pharmacist, a friend of mine down
9 in Stone County.

10 Q. Did you have any contact with Mr. Weingarten concerning
11 Wiley Fairchild's testimony right before the Nixon trial?

12 A. Yes, sir.

13 Q. How did that arise?

14 A. Mr. Weingarten called me and wanted me to meet him down
15 at the Howard Johnsons, pick him up, and bring him up to the
16 office, and go over Mr. Fairchild's testimony and the
17 questions he was going to ask Mr. Fairchild.

18 Q. Did Mr. Weingarten meet with Mr. Fairchild more than
19 once before the trial to review possible testimony?

20 A. Yes, sir, I believe he did. He came back another time
21 right before the trial.

22 Q. Who was present during this meeting?

23 A. I went and picked Mr. Weingarten up and brought him --
24 he came in the back door of Mr. Wiley's office and we sat in
25 the office with Mr. Fairchild and Mr. Weingarten and I.

1 Q. Can you just describe the layout of the room, who was
2 sitting where?

3 A. Yes, sir. We came in the door here, Mr. Fairchild was
4 sitting at the desk right here and I was sitting here and Mr.
5 Weingarten was sitting here.

6 Q. Here doesn't come through on the transcript.

7 A. All right.

8 Q. About how far -- were you sitting next to Mr.
9 Weingarten?

10 A. Yes, sir. Right next to him. And Mr. Fairchild was on
11 the other side of the desk facing us.

12 Q. About how far were you from Mr. Weingarten?

13 A. Well, I was right next to him, you know, two chairs
14 pulled up next to each other.

15 Q. Do you recall when this meeting occurred with respect to
16 weekday, weekend?

17 A. It was on a Saturday or a Sunday, I'm pretty sure. Mr.
18 Weingarten was dressed very casually when I went down and
19 picked him up.

20 Q. Can you describe how the conversation proceeded during
21 that meeting?

22 A. Well, when we -- you know, coming back from the motel he
23 explained to me, he said John, you've got to hold him on this
24 and we've got to -- you know, I'm going to go over the
25 questions and I'm going to go over his answers and make sure

1 he's comfortable with them and then I'm really only going to
2 ask him a few questions. But he said we got to make sure he
3 can, you know, hold to them. Mr. Fairchild has a limited
4 education, about 4th grade, and he doesn't -- sometimes he
5 wanders.

6 Q. You mean in his conversation?

7 A. Yes, sir.

8 Q. Can you describe how the conversation with Mr. Fairchild
9 and Mr. Weingarten proceeded then when you were sitting in
10 Mr. Fairchild's office?

11 A. Yes, sir. Mr. Weingarten had a list of questions and,
12 you know, one, two, three, four, and then he turned over and
13 wrote down and we talked about those things and we got his
14 come back on them and what he was comfortable with and how he
15 said certain things. When Mr. Weingarten was comfortable he
16 said now, those are the things I'm going to ask you. And Mr.
17 Fairchild said John, get them down. I said well, I took
18 notes, Mr. Fairchild. He said I want them down just like
19 that and I want them typed up so I can study them.

20 Q. What did you do next?

21 A. I got Mr. Weingarten's list and we went over it and I
22 wrote them down, got them typed, gave them to Mr. Fairchild
23 to study.

24 Q. Did Mr. Weingarten -- was Mr. Weingarten present while
25 you were copying the list?

1 A. Yes, sir. Sitting right next to me.

2 Q. I'd like to show you what's been marked as Petitioner's
3 Exhibit 1.

4 A. Yes, sir.

5 Q. I'd ask if you could identify that.

6 A. Yes, sir. These are the questions in the typewritten
7 form that I worked up.

8 Q. When you copied those notes from Mr. Weingarten, did you
9 get them verbatim or did you change them as you were copying
10 them?

11 A. No, sir. I got them verbatim.

12 Q. Before I come back to that Exhibit 1, I wanted to ask a
13 couple questions about the conversation before that was
14 prepared. Do you recall whether there was any conversation
15 during that meeting concerning the credibility as a witness
16 of Skip Jarvis, who was Mr. Fairchild's grandniece's husband,
17 I think.

18 A. Yes, sir, there was. Mr. Fairchild was not very fond of
19 Robert Jarvis because he was the one who had called the FBI
20 and told them that Mr. Fairchild and Judge Nixon were
21 involved in an illegal scheme. And so Mr. Weingarten was
22 very familiar with that fact and they were going over the
23 fact that Skip Jarvis's tape was probably going to be brought
24 up by Judge Nixon's counsel; and that Mr. Fairchild just
25 needed to say -- he said Skip Jarvis is not very credible.

1 We found out many things he told us over this long period of
2 time did not check out so he said we can't use much of his
3 testimony. And he said so why don't you just tell them that
4 you were just telling Skip what you wanted to tell him, what
5 he wanted to hear. He said but don't tell him I told you
6 that.

7 Q. Who said don't tell him I told you that?

8 A. Mr. Weingarten.

9 Q. You referred to these tapes. What were they tapes of;
10 do you know?

11 A. Yes, sir. The FBI had taped or put a tape recorder on
12 Skip Jarvis and sent him out to Mr. Fairchild's office to ask
13 him a lot of questions. And he played like he had not ever
14 talked with the FBI and that --

15 Q. All right.

16 A. I --

17 Q. I don't need a description.

18 A. There was another tape from him calling Mr. Fairchild's
19 home.

20 Q. Do you recall whether there was any discussion during
21 this meeting in Mr. Fairchild's office of when the meeting
22 with Judge Nixon and when the phone call from Bud Holmes'
23 farm had been placed?

24 A. Yes, sir. We had to keep, you know, the same times on
25 the phone call and on the meeting.

1 Q. All right.

2 A. I believe that's in here.

3 Q. You're referring to Exhibit 17

4 A. Yes, sir. Yes, sir.

5 Q. Do you see that there?

6 A. Yes, sir.

7 Q. Where is it?

8 A. When did Nixon --

9 Q. Are you referring to the second page?

10 A. Yes, sir. Second page. When did Nixon come up at the
11 phone call to him from you? He came up within a few days.
12 Did you ever hear from Nixon after his visit? Yes. That
13 night Nixon called and said Wiley, you remember the man we
14 were talking about this afternoon? Well, I'm at his house.
15 He says everything will be all right. Then Bud got on the
16 phone and said Wiley, when this man asks me to do something,
17 I do it. I thanked him for calling and said I would sleep a
18 lot better that night. We had a good bit of trouble with
19 that because we were trying to change from Bud calling him to
20 Judge Nixon calling him.

21 Q. Mr. Fairchild had trouble with that?

22 A. Yes, sir.

23 Q. He kept saying that -- are you saying that he kept
24 saying Bud Holmes called?

25 A. Yes, sir. That's the way he had said it originally.

1 Q. After the meeting that you've described and after
2 Exhibit 1 was prepared, what did you do with Exhibit 1?

3 A. I gave it right then to Mr. Fairchild and he studied it
4 the next two or three days.

5 Q. Did you review it with him orally while he was studying
6 it sometimes?

7 A. Yes, sir.

8 Q. Did you discuss with Mr. Weingarten after the meeting
9 but before Mr. Fairchild testified the upcoming testimony of
10 Mr. Fairchild?

11 A. Yes. Mr. Weingarten wanted to make sure that everything
12 was all right. That I had Mr. Fairchild trained.

13 Q. Was Mr. Weingarten ever present when Mr. Fairchild had
14 Exhibit 1 in his hands or in front of him?

15 A. Yes, sir, he was.

16 Q. When were those occasions?

17 A. Well, he came in the witness room where Mr. Fairchild
18 and I were a couple of times telling us how long it would be,
19 or whatever, Mr. Fairchild would be, and he saw him and asked
20 me, you know, if everything was all right and I told him.

21 Q. When Mr. Fairchild actually testified in Court, do you
22 know where he had Exhibit 1?

23 A. In his pocket. He had it folded up. He would fold it
24 to read one question at a time.

25 Q. After the testimony was over, did you discuss with Reid

1 Weingarten how Wiley Fairchild had testified, how his
2 testimony had gone at the Nixon trial?

3 A. Yes, sir. He came out and said -- smiled, that he
4 was --

5 Q. You made a gesture with your hands like a gesture of
6 triumph.

7 A. Right.

8 Q. After Mr. Fairchild's testimony was completed, did you
9 have occasion to speak with Mr. Reid Weingarten concerning a
10 possible pardon?

11 A. Yes, sir, I did.

12 THE COURT: When was this again? What was the time
13 on this?

14 A. After.

15 MR. STEWART: Your Honor, the testimony is in late
16 January of 1986.

17 Q. What prompted you to raise that subject with Mr.
18 Weingarten?

19 A. Mr. Fairchild. He kept saying I want to get a pardon,
20 presidential pardon. I've testified now, I want to get it.

21 Q. And what was Reid Weingarten -- did you call Mr.
22 Weingarten?

23 A. Yes, sir, I did.

24 Q. And what was Mr. Weingarten's response?

25 A. He said he would have to wait until the disposition of

1 the Nixon case to conclude it.

2 Q. Mr. Baltar, I wanted to show you copies of written
3 statements you prepared in connection with this case.
4 They're marked as Exhibit 13 and 14. Do you recognize those?

5 A. Yes, sir. That's statements that I gave on March 4 of
6 '88 to you and Mike Holleman.

7 Q. Now, do you recall -- and what's the date of the second
8 statement?

9 A. 3rd day of August, 1988. I gave this to Mike Holleman
10 and Mr. Boyce Holleman.

11 Q. And have you had an opportunity to review those over the
12 last few days?

13 A. Yes, sir.

14 Q. To the best of your knowledge are they true and
15 accurate?

16 A. Yes, sir. A couple of dates in there that I was not
17 exactly sure about and I've tried to check out -- the only
18 one really is when the poll -- when we had the meeting on the
19 poll down at the Ramada Coliseum.

20 Q. Yes, sir.

21 A. And it evidently wasn't on the first of November or the
22 latter part of October.

23 Q. All right.

24 A. It was after that date.

25 MR. STEWART: Your Honor, if I could have a second.

1 THE COURT: Yes, sir.

2 MR. STEWART: Your Honor, I have no further
3 questions.

4 THE COURT: Marshal, let's have a short recess, if
5 you will, please.

6 (Recess.)

7 MR. STEWART: Your Honor, the Clerk has pointed out
8 I did not move these exhibits into evidence. I had thought
9 through the stipulation process that that was not going to be
10 necessary. I just wanted to clarify.

11 THE COURT: I think we've already ruled on those
12 anyway.

13 MR. STEWART: They'll be handled separately.

14 THE COURT: Yeah. You'll have a chance at the time
15 you close or at the end of the whole hearing.

16 MR. STEWART: Thank you.

17 THE COURT: Okay. Mr. Cole.

18 MR. COLE: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. COLE:

20 Q. Morning, Mr. Baltar.

21 A. Morning.

22 Q. Guess it's afternoon by now, isn't it? We've never met
23 before, have we, sir?

24 A. No, sir.

25 Q. Never even talked, have we?

- 1 A. No, sir.
- 2 Q. Let me introduce myself. My name is James Cole. I'm an
3 attorney for the United States in this matter. By my watch
4 you testified for a good hour and a half, almost two hours.
5 Your recollection is pretty good in this case, isn't it, sir?
- 6 A. No, sir. All I did was tell the truth, you know. It's
7 easy to tell.
- 8 Q. You were able to talk about specific dates and times,
9 specific conversations; is that right?
- 10 A. Yes, sir. I was lucky one date was my daughter's
11 birthday. One was the '47 hurricane.
- 12 Q. '47 what, sir?
- 13 THE COURT: I can't hear you. Speak up a little,
14 Mr. Baltar.
- 15 A. I associate things with dates. The 1947 hurricane,
16 September 19th. Mr. Fairchild's birthday is September 19th.
- 17 Q. Even though Mr. Fairchild was sentenced on the 18th of
18 September.
- 19 A. Okay.
- 20 Q. Is that right?
- 21 A. I thought it was the 19th. Might have been the 18th.
- 22 Q. Mr. Baltar -- go ahead.
- 23 A. If you say so. I thought it was his birthday.
- 24 Q. You were there at the sentencing?
- 25 A. Yes, sir.

1 Q. I'd like to briefly talk about your employment first.

2 You said you're a real estate developer and consultant at
3 this time; is that right?

4 A. Yes, sir.

5 Q. Could you tell us who some of your clients are?

6 A. At this time?

7 Q. Yes.

8 A. Yes, sir. Mr. Tommy Thames, T-h-a-m-e-s.

9 Q. What are you doing for him?

10 A. Building a motel.

11 Q. Anybody else?

12 A. Mr. D. W. Snyder, S-n-y-d-e-r.

13 Q. What are you doing for him?

14 A. Building a motel. Mr. Henry Burkhalter. Going to
15 convert a motel into another motel and do the repair work on
16 it and sell it for him.

17 Q. Anyone else?

18 A. Yes, sir. CMR, which is Crosby Mississippi Resources.
19 I do things for them and also oil and gas work.

20 Q. Any other clients?

21 A. That's about all I can handle by myself right now.

22 Q. All these good paying clients, sir?

23 A. I hope so.

24 Q. Have they paid you?

25 A. Yes, sir.

- 1 MR. STEWART: Objection of relevance, Your Honor.
- 2 THE COURT: Yeah, I don't know what relevance that
- 3 has unless there's something I'm not aware of.
- 4 Q. Prior to this time you did work for Mr. Fairchild; is
- 5 that right?
- 6 A. Yes, sir.
- 7 Q. Why did you quit?
- 8 A. Why did I quit? Because he didn't pay me.
- 9 Q. You've sued him over that, haven't you?
- 10 A. Not yet, no, sir.
- 11 Q. Has he sued you?
- 12 A. No, sir.
- 13 Q. Had a falling out though; is that right?
- 14 A. Yes, sir.
- 15 Q. You know Judge Nixon; is that right?
- 16 A. Yes, sir.
- 17 Q. Known him quite awhile; is that right?
- 18 A. Well, I've known him about as long as I've known Mr.
- 19 Fairchild, yes, sir.
- 20 Q. Judge Nixon's a good friend of yours; is that right?
- 21 A. No, sir. He's quite a bit older than I am. Although he
- 22 might not look it but, I mean, I know who he is.
- 23 Q. You wouldn't call him a good friend?
- 24 A. Never had occasion to be a good friend.
- 25 Q. Pardon me?

1 A. Never had occasion to be a good friend. He's well
2 respected. I respect him quite a bit.

3 Q. Do you recall testifying in the Grand Jury, Mr. Baltar?

4 A. Yes, sir, I do.

5 Q. And that was on the date of September 5, 1984; is that
6 right?

7 A. If you say so.

8 Q. And do you recall being asked the following question and
9 giving the following answer:

10 Question: Has Wiley ever discussed --

11 MR. STEWART: Objection, Your Honor. Is there a
12 Rule 6 violation occurring here that I'm not aware of?

13 THE COURT: I don't know what we have.

14 MR. COLE: Your Honor, I'm just asking him if he
15 was asked a question. If it is a Rule 6 violation, Your
16 Honor, I would ask permission to ask Mr. Baltar this question
17 from his Grand Jury transcript.

18 MR. STEWART: Government has no --

19 THE COURT: Approach the bench.

20 (At the bench.)

21 MR. COLE: Judge, I have an impeaching statement
22 here right on point.

23 MR. STEWART: As to whether he's a good friend or
24 not?

25 MR. COLE: Yes. And I think that's relevant here.

1 THE COURT: I think Baltar's credibility is
2 relevant.

3 MR. STEWART: Your Honor, they've known for months
4 that we were going to be relying on Mr. Baltar's testimony.
5 If there was some reason to make this available -- they're
6 saying that we haven't provided material to them. We have
7 not had access to this testimony of the Grand Jury. It's not
8 fair. I don't know why he has to spring it out of the Grand
9 Jury. This is one-sided justice here. If there's something
10 in that transcript that we are entitled to, everybody's
11 entitled to it, not just Mr. Cole.

12 MR. COLE: Judge, this isn't one-sided justice.
13 This isn't springing anything. I did not see the Court's
14 order as requiring me to disclose every detail of my
15 cross-examination of a witness. I had no anticipation Mr.
16 Baltar would deny that he was a friend of Judge Nixon's.

17 THE COURT: Is that the sole thrust?

18 MR. COLE: That's the sole thrust of it.

19 THE COURT: I'll overrule the objection.

20 (Bench conference concluded.)

21 Q. Mr. Baltar, back to where we were. You said you weren't
22 good friends with Judge Nixon. Do you recall testifying in
23 the Grand Jury on September 5th, 1984, being asked the
24 following question and giving the following answer:

25 Question: Has Wiley ever discussed any visits from him,

1 referring to Judge Nixon?

2 Answer: No, sir. The Judge and I are good friends.

3 Question: Pardon me?

4 Answer: I said the Judge and I are very good friends.

5 Question: Judge Nixon and you are?

6 Answer: Oh, yes.

7 Does that refresh your recollection, Mr. Baltar, as to
8 your relationship with Judge Nixon?

9 A: Well, it's a friendly relationship. He speaks to me,
10 you know, when he sees me. I speak to him. Our families
11 have known each other for many years. But, you know, we
12 don't ever associate. He's in a different --

13 Q. I didn't ask if you went to dinner, Mr. Baltar. I asked
14 if you were good friends with him.

15 A. Well, I would consider him a friend, yes, sir.

16 Q. During the time that you were working with Mr. Fairchild
17 on this you apparently attended all meetings with Mr.
18 Fairchild and the Government; is that correct?

19 A. Probably so, yes, sir. I know there were some meetings
20 that Mr. Fairchild or I either one did not attend. But I
21 think I probably attended all of them.

22 Q. You were pretty interested in the case; is that right?

23 A. Not necessarily, no, sir. I was doing my job.

24 Q. And your job was to be interested in the case, wasn't
25 it?

- 1 A. Whatever Mr. Fairchild needed, yes, sir.
- 2 Q. You were at trial everyday, weren't you?
- 3 A. Which trial?
- 4 Q. Judge Nixon's trial.
- 5 A. I believe so, yes, sir.
- 6 Q. And you probably read all the papers involved in the
7 case, didn't you?
- 8 A. No, sir.
- 9 Q. Have you read any of the pleadings involved in this
10 case, this hearing that we're having today?
- 11 A. What do you mean by pleadings?
- 12 Q. The various documents that the Government has filed,
13 that Judge Nixon has filed, the briefs that they've filed?
14 Have you looked over some of that?
- 15 A. Have not read a one, no, sir.
- 16 Q. You talked to lawyers for Judge Nixon; is that right?
- 17 A. Talked to Mr. Boyce Holleman, Mr. David Stewart, and Mr.
18 Mike Holleman.
- 19 Q. And did you talk to Judge Nixon's lawyers at all during
20 his trial?
- 21 A. Yes, sir. Mr. Mike Fawer.
- 22 Q. You didn't dislike Mr. Fawer, did you?
- 23 A. Sir?
- 24 Q. You didn't dislike Mr. Fawer, did you?
- 25 A. No, sir.

1 Q. Now, when all of this was going on with Mr. Fairchild,
2 as you say the Government telling him what to say, making him
3 change his story, did you think that was okay, Mr. Baltar?

4 A. Well, they would refresh his memory and Mr. Fairchild's
5 memory gets refreshed and he, you know, sometimes quite often
6 changes his mind.

7 Q. So Mr. Fairchild sometimes is confused about facts; is
8 that right?

9 A. Yes, sir.

10 Q. And sometimes when somebody refreshes his recollection
11 his memory will improve; is that right?

12 A. That's what he says, yes, sir.

13 Q. It's not lying, is it?

14 A. I had no opportunity to know the truth so, you know, I
15 was not there when it happened, any of it, and so I had
16 nothing to base it on.

17 Q. I'm asking you your experiences with Mr. Fairchild when
18 his memory gets refreshed. You say this happens periodically
19 other times than in this proceeding; isn't that right, Mr.
20 Baltar?

21 A. What?

22 Q. Other times than during Judge Nixon's trial and before
23 Judge Nixon's trial you've been around Mr. Fairchild where
24 his memory gets refreshed; is that right?

25 A. Yes, sir.

1 Q. And it's not that he's lying, is it?

2 A. If I don't know the truth, I have no way to judge it.

3 Q. At the time did you think he was lying when the
4 Government would refresh his memory?

5 A. No, sir.

6 Q. Now, Mr. Baltar, I think you said that the Government
7 did more than refresh his memory or did they just refresh his
8 memory? Did they tell him what to say or did they just try
9 and refresh his memory?

10 A. They told him of facts that they had that would put
11 certain things on certain dates.

12 Q. And did the Government lie to your knowledge about the
13 facts they would tell him?

14 A. I didn't know the facts they had, sir, so I didn't have
15 any way to base it whether they were or not.

16 Q. So to your -- you have no idea whether it was a lie or
17 not?

18 A. No, sir, I don't. I still don't know the truth.

19 Q. Did you think there was anything improper in the
20 Government trying to refresh Mr. Fairchild's memory?

21 A. He would ask them to refresh his memory.

22 Q. I'm asking you if you thought there was anything
23 improper about it.

24 A. I did not think that they would do anything improper,
25 no, sir, I didn't.

1 Q. You didn't think there was anything improper about it at
2 the time?

3 A. No, sir.

4 Q. Do you think there's anything improper about it right
5 now?

6 A. About what right now?

7 Q. About the Government refreshing Mr. Fairchild's memory?

8 A. Like I say, I don't know the truth yet so I don't know,
9 you know, which side's telling the truth.

10 Q. So your opinion has not changed since the time of the
11 trial; is that right?

12 A. No, sir.

13 Q. So just so we can get this straight, it was a refreshing
14 of recollection for Mr. Fairchild, a telling him of evidence
15 that they had. Meaning the Government.

16 A. Uh-huh.

17 Q. Is that correct?

18 A. Saying that they had evidence to say it was between
19 certain dates and so forth and Mr. Fairchild has a problem
20 with dates.

21 Q. And they weren't instructing him what to testify to,
22 they just were trying to show him what other evidence there
23 was to help him remember; is that right?

24 A. They didn't really show, they just said that they had
25 information and that this is when it had to be.

- 1 Q. And that was just to help him remember; is that right?
- 2 A. Yes, sir, and to get him to say what, you know, the
3 dates were.
- 4 Q. Well, they weren't instructing him what to say. I need
5 -- we need to get this straight, Mr. Baltar. They weren't
6 instructing him what to say, they were just telling him what
7 their other evidence showed; is that right?
- 8 A. Yes, sir. When Mr. Weingarten would sit down with us
9 and go over it, he kind of instructed him the questions he
10 was going to ask and answers he needed.
- 11 Q. He kind of instructed him?
- 12 A. Yes, sir.
- 13 Q. Mr. Baltar, this is an important matter, and I think we
14 need to stay away from trying to weasle around things.
- 15 A. Okay.
- 16 Q. Was Mr. Fairchild instructed what to say by the
17 Government?
- 18 A. Yes, sir.
- 19 Q. He was. Whether he wanted to say that or not; is that
20 what you're saying?
- 21 A. Well, Mr. Fairchild, you know, when he decided he was
22 going to make a plea and try to get out of this thing, seemed
23 to take a change and the stories became different. Now,
24 whether it was because of him recollecting it or because it
25 was just because they suggested, I don't know. I did not ask

1 him.

2 Q. So you cannot here say to us today that the Government
3 instructed Mr. Fairchild to change his story whether it was
4 true or not?

5 A. I can say to you that Mr. Weingarten told him this is
6 what you need to say. Now, you know, and we outlined it and
7 this is what I'm going to ask you and this is what the answer
8 is.

9 Q. He would instruct him on the answer?

10 A. Yes, sir.

11 Q. You heard that?

12 A. Yes, sir. ~~Sitting~~ right there.

13 Q. You ~~didn't~~ think there was anything wrong with that?

14 A. No, sir.

15 Q. You still think there's nothing wrong with that, Mr.
16 Baltar?

17 A. Well, not if he has the facts that he said he had,
18 there's nothing wrong with it.

19 Q. Let's talk about Drew Fairchild's case a little bit.
20 You've testified that Mr. Weingarten said he would do what he
21 could to help Drew; is that right?

22 A. Yes, sir. And Mrs. Little also.

23 Q. Pardon me?

24 A. Mrs. Little.

25 Q. Mrs. Little said it, too?

1 A. Uh-huh. Both of them were very fond of Drew.

2 Q. Could you tell us where in your affidavit, Mr. Baltar,
3 in either of your affidavits, there's any mention of Mrs.
4 Little saying that?

5 A. No, sir, I didn't put that on there but that's true.

6 Q. I see. These affidavits --

7 A. They would be together and I just took it Mr. Fairchild
8 -- I mean Mr. Weingarten was a good man.

9 Q. Now, these declarations that you made, the first one
10 dated the 4th of March, 1988, it's under the penalty of
11 perjury; is that right?

12 A. Uh-huh.

13 Q. Pretty important document, isn't it?

14 A. Uh-huh.

15 Q. You know that a lot of things are at stake with this
16 document; isn't that right?

17 A. I don't know, sir.

18 Q. You know it's under penalty of perjury.

19 A. Uh-huh.

20 Q. And the second one is also under penalty of perjury; is
21 that right?

22 A. Yes, sir.

23 MR. STEWART: Objection, Your Honor. He's
24 harassing the witness.

25 THE COURT: I'll sustain the objection on

1 harassment.

2 Q. So, Mr. Baltar, it's a fact there's no mention of Jan
3 Little talking about Drew's case in either of these
4 affidavits; is that right?

5 A. No, sir. I didn't mention Mrs. Little. I saw her out
6 there while ago and spoke to her, but I didn't say anything
7 about it.

8 Q. As a matter of fact, you didn't even mention anything
9 about it during direct examination here today; isn't that
10 right?

11 A. That's right.

12 Q. Just came up right now. Just hit your brain right now;
13 is that right, sir.

14 A. Well, Mr. Cole, is it?

15 Q. Yes.

16 A. Mr. Weingarten spoke for the Justice Department. All
17 dealings I did was with Mr. Weingarten.

18 Q. Well, what we're talking about now, you volunteered, Mr.
19 Baltar, that Mrs. Little made promises about what they'd do
20 for Drew?

21 A. No, I didn't, sir. I said she was fond of Drew. You
22 know, she would sit around and say -- you know, they would be
23 talking about their fondness of Drew.

24 Q. That's all she'd say? So she wouldn't say they'd help
25 Drew?

1 A. As far as I was concerned she didn't have the authority
2 to say.

3 Q. I'm not asking what she had the authority to do, Mr.
4 Baltar. If you could please answer my question. Did she --

5 MR. STEWART: Objection. He interrupted the
6 witness.

7 THE COURT: Overrule.

8 Q. Please answer my question as to: Did Mrs. Little say
9 she would help Drew? Did you hear her say that?

10 A. I never specifically asked her if she would help Drew.

11 Q. Mr. Baltar, my question is not whether you asked her or
12 not; my question is whether you heard her say it or not.
13 Simply yes or no will do.

14 A. I don't recall whether she specifically said she was
15 going to help Drew. I really don't.

16 Q. Now, in the early affidavit you gave, the first
17 affidavit that you gave.

18 A. Yes, sir.

19 Q. You talk about this matter in Paragraph 5 and you state
20 and I quote -- would you like to have your affidavit, Mr.
21 Baltar? It might help you to follow along because we're
22 going to be talking about this.

23 A. Yes.

24 Q. I think I have them right here, Mr. Baltar. Exhibits 13
25 and 14.

1 A. Thank you.

2 Q. Let's start with 13. That's your first affidavit, isn't
3 it?

4 A. Yes, sir.

5 Q. Paragraph 5 on Page 2. See it?

6 A. Yes, sir.

7 Q. Here it says -- now, I believe this is the only
8 paragraph in this affidavit that has to do with the question
9 of -- well, no, there's one other. There's two questions
10 that have to do with the question of Drew Fairchild; is that
11 right? Five and six.

12 A. I see Drew's name mentioned in both of them, yes, sir.

13 Q. Okay. Paragraph 5 it says: In meetings with Mr.
14 Fairchild and me, in early 1985, Mr. Weingarten promised to
15 do what he could to help Mr. Fairchild's son, Drew; is that
16 right?

17 A. Yes, sir.

18 Q. That's your testimony today?

19 A. Yes, sir.

20 Q. Now, you said you never read the Government's brief in
21 this case, Mr. Baltar? It's on file. It's public. You're
22 aware of that?

23 A. No, sir.

24 Q. Were you aware that in the Government's brief they have
25 stated and I quote from Page 29 to 30: Even Wiley

1 Fairchild's affidavit states that the subject was not
2 discussed until early 1985.

3 MR. STEWART: Objection. He's already answered
4 that he did not look at the brief. He's arguing with the
5 witness.

6 THE COURT: Well, it's a little unusual question
7 based upon the Government brief, Mr. Cole.

8 MR. COLE: It's a public document, Your Honor.

9 THE COURT: Whatever. Why don't you ask him the
10 question you want him to answer without regard to the brief.

11 Q. Were you aware that in the Government's brief, Mr.
12 Baltar, one of points being made was that according to the
13 affidavits that had been filed nothing was said about Drew's
14 case until early 1985 between the Government and Mr.
15 Fairchild according to the briefs and the affidavits filed by
16 Judge Nixon, the Petitioner in this case, nothing had been
17 said until 1985 about Drew Fairchild's case; were you aware
18 of that?

19 A. Mr. Cole, I'm not an attorney. I didn't even know a
20 brief had been filed.

21 Q. Wasn't in the newspapers that briefs had been filed?

22 A. May have been. I don't know, sir. I didn't read them
23 if there was.

24 Q. Now you write another affidavit; is that right? A
25 little later on, Exhibit 14.

1 A. All right, sir.

2 Q. How did you come to write this second affidavit, Mr.
3 Baltar? Somebody ask you to do it?

4 A. Mr. Cole, I was meeting with Mr. Gunn and Mr. Fairchild
5 back on the date of the first affidavit or declaration it's
6 called and Mr. Fairchild said it's a quarter to 5:00, you got
7 a man that's going to be out at the office to meet with you
8 at 5:00 o'clock.

9 Q. Said who would?

10 A. A man. And I was pretty sick that day. I went down and
11 I met with Mr. Stewart, Mr. Holleman, and that's where this
12 one came from.

13 Q. My question is on the second one.

14 MR. STEWART: Objection. Please let -- if he could
15 let the witness finish.

16 THE COURT: I'll sustain the objection. He may
17 finish his answer.

18 A. So then a later date they called and asked if I could
19 come down to -- Mike Holleman did -- to Gulfport or get
20 together in Jackson, either one, to talk with him again. And
21 I was going to be in Gulfport on business so I went by his
22 office down there, yes, sir.

23 Q. Were you --

24 A. The first time was at Mr. Fairchild's instructions that
25 I meet with these people.

- 1 Q. The second time was not at Mr. Fairchild's instructions?
- 2 A. No, sir.
- 3 Q. It was on your own?
- 4 A. Yes, sir.
- 5 Q. You agreed to do this voluntarily?
- 6 A. Yes, sir.
- 7 Q. And you wrote out an affidavit for them?
- 8 A. Yes, sir.
- 9 Q. And this is it, Exhibit 14?
- 10 A. Yes, sir.
- 11 Q. I'd like to draw your attention to Page 5 of Exhibit
- 12 14. This is the new Baltar affidavit; is that right?
- 13 A. This one says affidavit and this says declaration. I
- 14 don't know what the difference is.
- 15 Q. This one was filed after the Government's brief was
- 16 filed; is that right?
- 17 A. Sir, I didn't know the Government had filed a brief.
- 18 MR. STEWART: Objection.
- 19 A. I don't know when they filed a brief.
- 20 THE COURT: The dates speak for themselves.
- 21 Q. Now all of a sudden, Mr. Baltar, on Page 5 at the
- 22 bottom, and onto Page 6, you've changed the date of when the
- 23 contacts concerning Drew Fairchild's case occurred and it
- 24 states: Either at this meeting, referring to the November
- 25 1st, 1984 proffer, or in a subsequent meeting, and before Mr.

1 Fairchild's second Grand Jury appearance on November 28,
2 1984. Mr. Fairchild also wanted an agreement from Mr.
3 Weingarten, that he would help his son Drew for which Mr.
4 Weingarten responded he would do what he could to help Drew;
5 is that what it says?

6 A. Yes, sir. That's pretty accurate. The first time was
7 late at night, I was very sick, and these gentlemen came in
8 and we spent a couple hours together or something, 30
9 minutes, something like that, and I didn't, you know, get
10 into a whole lot of it with them.

11 Q. So in other words you made a mistake the first time; is
12 that what you're saying?

13 A. If it's different, yes, sir. This all happened a good
14 while back, you know.

15 Q. Hard to remember things awhile back, isn't it?

16 A. Sometimes, yes, sir.

17 Q. Let's go to early 1985, Mr. Baltar. In early 1985, Drew
18 Fairchild had a plea agreement with the State of Mississippi;
19 did he not?

20 A. I guess that was the same one, just been taken forward,
21 hadn't it?

22 Q. I'm asking you the question, sir.

23 A. I was not that familiar with Drew's case. I didn't
24 handle much in Drew's case. I just, you know, negotiations
25 between Mr. Weingarten and what he was going to do to help.

1 Q. Were you aware that he had a plea agreement with the
2 State of Mississippi or not, Mr. Baltar?

3 A. Hearsay, sir.

4 Q. Hearsay?

5 A. Uh-huh.

6 Q. And what was your understanding from that hearsay?

7 A. Well, originally he had a plea agreement where he would
8 get a 5,000-dollar fine and suspended sentence.

9 Q. Now we move to March of 1985. And up until that point,
10 up until March, Drew had this deal with the State with no
11 prison time; isn't that right?

12 A. As far as I know, yes, sir.

13 Q. And in March, 1985, March 8th, 1985, Drew was informed
14 by Judge McKenzie, the State Judge, that the plea will not be
15 accepted, that the deal will not be accepted, and Drew
16 Fairchild will not be guaranteed no prison time; isn't that
17 right?

18 A. I believe it was on television that he was going to give
19 him the maximum sentence.

20 Q. Now all of a sudden Drew Fairchild's deal with the State
21 is gone because he withdraws his plea; isn't that right?

22 A. Well, I think he had to withdraw his plea, yes, sir,
23 because he had pled guilty before.

24 Q. Prior to that he had no reason to need the Federal
25 Government's help; isn't that right? Because he had the deal

1 with the State until that time.

2 A. Not really, sir. It was never trusted from Mr.
3 Fairchild because it had been taken in and out of Court so
4 many times and it would upset him everytime it got in the
5 press.

6 Q. Bud Holmes was gone at that point, wasn't he?

7 A. Well, he was out of office, yes, sir.

8 Q. Now, after the plea is withdrawn, you go to see Mr.
9 Hess; is that right?

10 A. Mr. Fairchild told me to take Drew down to Barry Hess
11 and get his deal worked out with the Federal Government.

12 Q. And at that point Mr. Hess represents Drew Fairchild; is
13 that right?

14 A. Yes, sir. I would say when we got down there and he
15 picked up the phone he started representing him.

16 Q. And he talked to Reid Weingarten; is that right?

17 A. Yes, sir.

18 Q. Did you hear the other side of the conversation? Do you
19 know it was Reid on the other end of the phone?

20 A. No, sir. He called his name, but --

21 Q. Okay. And one of the concerns that was going on at this
22 time was that Drew was going to be punished by the State;
23 isn't that right? For his cooperation with the Federal
24 Government investigation?

25 A. Well, he was going to get, they said, five years.

1 Maximum sentence, whatever that was.

2 Q. And wasn't the view that this was going to be punishment
3 because Mr. Drew Fairchild was cooperating with the Federal
4 authorities?

5 A. It was felt that they were going to give him an unfair
6 sentence.

7 Q. And Mr. Hess was calling Mr. Weingarten because he
8 didn't think Drew should be punished for cooperating with the
9 Federal Government; isn't that right?

10 A. Yes, sir. And Mr. Weingarten had told us he would help
11 in getting into the Federal Courts. Either one of them could
12 take the case.

13 Q. Now, you say in your affidavit, Paragraph 7 of your
14 first affidavit or declaration, you understood that Mr.
15 Weingarten reached an agreement with State authorities to
16 have the Federal prison term satisfy the State prison term.
17 You say that; isn't that right?

18 A. Yes, sir.

19 Q. You didn't have any firsthand knowledge of that, did
20 you?

21 A. I read the letter that he wrote to Mr. White.

22 Q. You read the letter that Mr. Weingarten wrote concerning
23 that subject?

24 A. Uh-huh.

25 Q. Do you remember the date of that letter, Mr. Baltar?

1 A. No, sir, I don't.

2 Q. Mr. Baltar, I'd like to show you what's been marked
3 Respondent's Exhibit F. Is that the letter you're talking
4 about?

5 A. Yes, sir. I've seen that letter before.

6 Q. Is that the one you're talking about?

7 A. I don't recall if I saw -- you see, Drew was not really
8 my primary responsibility.

9 Q. All I want to know, Mr. Baltar, is that the letter
10 you're talking about when you say you saw a letter that gave
11 you the understanding that Mr. Weingarten had worked out a
12 deal to have the Federal time satisfy the State time; is that
13 the letter you're talking about?

14 A. Well, this one doesn't say. This one just is asking him
15 -- telling his relationship with Mr. Drew Fairchild and that
16 he has cooperated with us.

17 Q. Doesn't say anything in there about Federal time
18 satisfying State time, does it?

19 A. No, sir, it doesn't.

20 Q. Is there another letter, Mr. Baltar?

21 A. Might have been.

22 Q. Could you be mistaken about this?

23 A. Oh, it's possible, yes, sir. I make mistakes all the
24 time but -- there was a time when we had to get together and
25 talk about -- with Judge McKenzie and the DA and Drew and Mr.

1 Gunn and Mr. Wiley and I -- about Drew's time in Federal
2 prison satisfying his time in State prison.

3 Q. Was Mr. Weingarten at this meeting?

4 A. No, sir, he wasn't. Just those I named. And the Judge
5 and the DA were on the telephone.

6 Q. Well, again, Mr. Weingarten didn't have anything to do
7 -- you don't have any firsthand knowledge of Mr. Weingarten
8 doing anything concerning that, do you?

9 A. At that meeting, no, sir.

10 Q. The only knowledge you say you have is the letter you
11 saw from Mr. Weingarten to Mr. White?

12 A. Yes, sir. I've seen a couple of letters. And this is
13 the only -- this one doesn't say about, you know, doing a
14 sentencing, it's just talking about he's going to be
15 sentenced on the 8th.

16 Q. That's the State sentence?

17 A. Yes, sir.

18 Q. This is just informing the Court or Mr. White that Mr.
19 Fairchild's cooperating with the Federal Government; isn't
20 that right?

21 A. Yes, sir.

22 Q. Nothing more, nothing less?

23 A. No. Mr. Weingarten said that, you know, he had talked
24 with Mr. White.

25 Q. Mr. Weingarten said that?

1 A. Yes.

2 Q. To who? To you?

3 A. Yes, sir.

4 Q. What did he say?

5 A. Just that he, you know, he would tell us that he had
6 been in touch with Mr. White. He would assure us that Drew
7 was not going to be drug around any more.

8 Q. Wouldn't be punished?

9 A. Right.

10 Q. Did he tell you that he had worked out a deal with Mr.
11 White where the State time was going to be satisfied by any
12 Federal time, Mr. Baltar?

13 A. I believe he did, yes, sir.

14 Q. He said that to you?

15 A. I believe so, yes, sir.

16 Q. That's not in your affidavit here, is it?

17 A. I would have to read it to see.

18 Q. Well, look at Paragraph 7. I understood. It's not
19 Weingarten said, it's I understood; is that right?

20 A. Well, understood from Mr. Weingarten, yes, sir.

21 Q. Other places in this affidavit, Mr. Baltar, you're
22 pretty specific about Mr. Weingarten said this and Mr.
23 Weingarten said that. Here it's just an understanding you
24 have; is that right?

25 A. Well, it will speak for itself.

1 Q. And I believe you testified on direct examination that
2 you didn't have any direct contact with Mr. Weingarten about
3 the deal, Mr. Hess handled that; isn't that right?

4 A. Directly Mr. Weingarten handled the deal.

5 Q. So when you say I understand something, that means
6 you're getting it second or third hand; is that right?

7 A. Well, not necessarily. I use that phrase sometimes.

8 Q. So a little imprecise then in this document; is that
9 what you're saying?

10 A. Maybe in that one particular incident, yes, sir.

11 Q. Well, there's another instance, too, we just talked
12 about earlier. About the dates in talking about Drew's
13 case. That's another instance you're a little mistaken or
14 uncertain; is that right?

15 A. What dates were those, sir?

16 Q. Whether Drew's case was first discussed in early 1985 or
17 whether it was first discussed in November of 1984.

18 A. It was first discussed back in October, November, of
19 '84.

20 Q. I see. And so that's another mistake in this
21 declaration of yours; is that right?

22 A. Possibly so. This first one, as I say, I was pretty
23 sick that night with sinus infection, coughing, and all I
24 wanted to do was get home.

25 Q. Let's talk about the pardon for a little while, Mr.

1 Baltar. In your second affidavit, you say that -- looking at
2 Paragraph 16. You state here: After Mr. Fairchild had
3 served his sentence, he instructed me to call Mr. Weingarten
4 and inquire about a pardon; is that what it says there?

5 A. Yes, sir.

6 Q. That's before trial?

7 A. Before Mr. Nixon's trial?

8 Q. Yes.

9 A. Uh-huh.

10 Q. And you had a conversation with Mr. Weingarten about
11 that?

12 A. Yes, sir.

13 Q. And he told you about what the procedures were to obtain
14 a pardon; isn't that right?

15 A. Yes, sir.

16 Q. In your first affidavit, go to Paragraph 12. See the
17 first line on Paragraph 12, Mr. Baltar?

18 A. Yes, sir.

19 Q. Says: After Judge Nixon's trial was concluded, Mr.
20 Fairchild asked me to contact Mr. Weingarten and ask about a
21 pardon.

22 A. He sure did.

23 Q. Mr. Baltar, when you made out the second affidavit, did
24 any of the attorneys you were talking to tell you what was in
25 the Government's brief on that point?

1 A. They never mentioned a brief.

2 Q. Never mentioned that the Government's brief talked about
3 how there wasn't any pardon talked about under your affidavit
4 until after the trial so there was nothing to be disclosed?

5 A. No, sir. Sure didn't.

6 Q. You just changed it all on your own again, Mr. Baltar;
7 is that right?

8 MR. STEWART: Objection.

9 THE COURT: Overrule. Cross-examination. He may
10 answer.

11 A. There was a third time in early May that I called Mr.
12 Weingarten about a pardon and I'm sorry but I failed to put
13 that down. I just thought I'd mention the pardon. And when
14 I was in Washington in May I talked to the pardon attorney
15 and got a -- or lady and got a copy of the rules on it.

16 Q. So we got another mistake at dates, don't we, Mr.
17 Baltar? Another little error?

18 A. Not necessarily, no, sir.

19 Q. There were several conversations you're saying now; is
20 that right?

21 A. Three that I know of, yes, sir.

22 Q. Three that you know of.

23 A. Yeah.

24 Q. And your first declaration you only talk about one; is
25 that right?

1 A. What paragraph is that, sir?

2 Q. That's Paragraph 12, Mr. Baltar. But feel free to look
3 at the rest of it to see if there's any others.

4 MR. STEWART: Your Honor, I object. Mr. Baltar has
5 stated that it was May of this year. The first affidavit is
6 dated March of this year. He's confusing the witness.

7 MR. COLE: No, Your Honor, I am not confusing the
8 witness.

9 THE COURT: If that's an objection, I'll overrule
10 it. He can look at it and take his time. Mr. Baltar.

11 A. This says: After Judge Nixon's trial was concluded, Mr.
12 Fairchild asked me to contact Mr. Weingarten, ask if Mr.
13 Weingarten would assist in an application by Mr. Fairchild
14 for a presidential pardon.

15 Q. My question is: In the first affidavit you only mention
16 one instance where you contacted Mr. Weingarten; isn't that
17 right?

18 A. Yes, sir.

19 Q. And that instance you put at being after the trial;
20 isn't that right?

21 A. Right.

22 Q. Now lets go to second affidavit.

23 A. Okay.

24 Q. That one is dated August of 1988; is that right?

25 A. Yes, sir.

1 Q. Okay. And now here you're up to two times that you
2 contacted Mr. Weingarten; is that right?

3 A. Uh-huh. Now I'm up to three because I remember doing it
4 in May.

5 Q. That's right. You're a step ahead of me, Mr. Baltar.
6 So this second affidavit isn't exactly accurate either, is
7 it?

8 A. Well, if you add it to the first one it is.

9 Q. Well, no, I think two are covered together from the
10 first and the second, aren't they? Doesn't Paragraph 18
11 refer -- in the second one -- refer to the same thing as
12 Paragraph 12 in the first one?

13 A. Well, one time's one time and one time's another. And
14 if you'll allow me to amend it I'll put it in there that it
15 was in early May, probably around the 5th to the 10th that I
16 talked to Mr. Weingarten.

17 Q. That is three times now?

18 A. Yes, sir. At his new law office, wherever that might
19 be. I had to track him down.

20 Q. So the first affidavit you only said one time, right?

21 A. Uh-huh.

22 Q. The second affidavit now it's up to two times both
23 before and after trial. And now you sit here today, Mr.
24 Baltar, and we're up to three times; is that right?

25 A. Uh-huh. I didn't -- you know, Mr. Cole, I didn't put in

1 here the whole trial from beginning to end. It was 22
2 months. It was a long time.

3 Q. I'm not asking whether you put in the whole trial. But
4 about the things you put in you didn't tell the whole story
5 as you're telling it today, did you?

6 MR. STEWART: Objection. Arguing.

7 THE COURT: Sustain.

8 Q. When Mr. Weingarten told you of the procedures for a
9 pardon -- he did tell you those, didn't he?

10 A. Yes, sir.

11 Q. Told you there's a five-year wait before you can even
12 apply, didn't he?

13 A. No, sir, he didn't.

14 Q. Didn't tell you that?

15 A. No, sir, he didn't.

16 Q. You found that out on your own?

17 A. Found that out on my own, yes, sir.

18 Q. He told you that the application really has to be
19 addressed to the pardon attorney; isn't that right?

20 A. He told me that it would have to go through the pardon
21 attorney and that they would check with him and he would have
22 to rule on it.

23 Q. Mr. Weingarten would have to rule on it?

24 A. They would come to him as a prosecuting attorney.

25 Q. And he would have to rule on it?

1 A. He would have to tell them, you know, what he thought
2 about the situation one way or the other.

3 Q. He'd have to tell them the facts of what happened,
4 right?

5 A. (Nods head.)

6 Q. You have to answer out loud, Mr. Baltar.

7 A. His words were, I'll be glad to help Mr. Fairchild, you
8 know, and they would have to come to me as the prosecuting
9 attorney.

10 Q. Mr. Baltar, that's not my question.

11 MR. STEWART: Objection. He hadn't finished his
12 answer.

13 THE COURT: Let's start over again, Mr. Cole.

14 MR. COLE: Thank you, Your Honor.

15 Q. When you called Mr. Weingarten, he was telling you about
16 the procedures; is that right?

17 A. He just said there is a procedure, that's all.

18 Q. That's the extent of it?

19 A. Yes, sir.

20 Q. He didn't tell you about the pardon attorney now? Are
21 you going to change that?

22 A. No, sir. You were bringing up about procedures. He
23 said there is a procedure and you go through the pardon
24 attorney and you will have to apply to him and then he will
25 come by and talk to me as the prosecuting attorney. But I'm

1 not going to do anything until after the Nixon --

2 Q. Is that the extent of it, Mr. Baltar?

3 A. Well, I checked -- I went to the agent in Mattiesburg,
4 Mr. Lawless, and I asked him about it. He looked it up in
5 his book and told me to see George Phillips. And I came up
6 to George and George and I went in his office and he looked
7 it up, got me the address and all that. I didn't know you
8 wanted all that. But that was, you know, all part of it.
9 And then in May I went to Washington. You know, I talked
10 with the pardon attorney lady, she's not the pardon attorney,
11 she had been there 28 or 30 years. But she gave me copies --
12 she didn't have one, she mailed it to me -- of what you do
13 for the procedure.

14 Q. Procedures are published in public books, aren't they?

15 A. I don't know, sir. I never read it.

16 Q. And the pardon attorney makes the decision, doesn't he,
17 and the President?

18 A. Yes, sir.

19 Q. Did Mr. Weingarten ever tell you Wiley's got to testify
20 a certain way or I'm not going to help him with his pardon?

21 A. Not in those words, no, sir.

22 Q. Not in those words?

23 A. No, sir.

24 Q. Did he convey that to you somehow? What do you mean by
25 not in those words?

1 A. He didn't say Wiley's got to testify a certain way. He
2 said I want to go over the questions I'm going to ask Mr.
3 Fairchild at trial and we want to sit down and make sure he
4 studies them and learns them. I'm not going to try to go
5 into a lot with him because I can't keep him in there. But
6 he said, you know, he wanted to get together. So I went and
7 picked him up and we got together and wrote them out.

8 Q. Excuse me, Mr. Baltar. But my question has to do with
9 did Mr. Weingarten ever say to you or did you hear him say to
10 Mr. Fairchild, you're going to have to testify the way I want
11 or I'm not going to help you with a pardon?

12 A. As far as I know Mr. Fairchild's never talked to him
13 about a pardon. Mr. Fairchild had me talk to him about a
14 pardon.

15 Q. Did he say it to you?

16 A. No, sir, he didn't.

17 Q. Thank you. Let's go on to Wiley's sentencing. You were
18 there at his sentencing; is that right?

19 A. Yes, sir.

20 Q. Richard Horn was there.

21 A. Yes, sir.

22 Q. As an attorney for Mr. Fairchild; is that right?

23 A. Yes, sir. He was there in the place of Barry Hess.

24 Q. He was representing Mr. Fairchild; is that right?

25 A. Yes, sir. He was Mr. Hess's partner. Mr. Hess was in

1 another case at the time.

2 Q. And Reid Weingarten was there?

3 A. Yes, sir.

4 Q. Jan Little was there?

5 A. I don't remember whether Jan was there or not. She
6 could have been at that time.

7 Q. Would it refresh your recollection, Mr. Baltar, if I
8 showed you the sentencing and showed you the appearances of
9 counsel?

10 A. Probably would, yes, sir. Okay. She was there.

11 Q. Does that refresh your recollection?

12 A. Uh-huh.

13 Q. And according to you Mr. Fairchild said that to Reid
14 Weingarten before you went into Court; is that right?

15 A. Yes, sir.

16 Q. He said -- I think there's a quote in here in your
17 second affidavit. I think your quote is -- and it's in a
18 quote; is that right? So you remember these exact words as
19 they were said; is that right?

20 A. Where are you located?

21 Q. I'm looking at Page 7, Paragraph 15.

22 A. Yes, sir. Mr. Fairchild's repeated that many a time.

23 Q. Just like I told John, you don't have to worry about
24 me. I'm going to say whatever you want me to say at Judge
25 Nixon's trial; is that right?

1 A. Yes, sir.

2 Q. The only people there were you, Mr. Fairchild, and Mr.
3 Weingarten; is that right?

4 A. Yes, sir.

5 Q. Everybody else had scattered at that point; is that
6 right?

7 A. I don't know exactly where they were. I remember Mr.
8 Weingarten coming and walking down the hall and we talked
9 with him. It was a long hall. I don't know where they were.

10 Q. Nobody else was with you?

11 A. No, sir. By himself. And then after the trial he and
12 Mr. Gunn walked way down to the other end of the hall and
13 they talked.

14 Q. Now, you don't know whether what Mr. Fairchild meant was
15 I'm going to tell the truth or I'm going to tell a lie
16 because you don't know whether his testimony was truthful or
17 untruthful at that point; is that right?

18 A. I don't know what the real truth was in that trial, no,
19 sir.

20 Q. So if Mr. Weingarten had asked Mr. Fairchild to tell the
21 truth, and Mr. Fairchild's response was I'm going to testify
22 just the way you want me to meaning I'm going to tell the
23 truth, would have been the same quote, wouldn't it?

24 A. Yes, sir.

25 Q. You're the one who set up the sentencing for Mr.

1 Fairchild, you called Mr. Weingarten to set this up?

2 A. Well, sir, I didn't set it up. I just told him Mr.

3 Fairchild wanted to be sentenced, you know. Mr. Weingarten,

4 I guess, set it up, or the Judge.

5 Q. You're the one who called Mr. Weingarten to get it set
6 up; is that right?

7 A. Yes, sir. To tell him what Mr. Fairchild's wishes were
8 to get sentenced.

9 Q.. Mr. Fairchild didn't have any lawyers at this point?

10 A. Yes, sir, he did.

11 Q. He didn't use them to talk to Mr. Weingarten about when
12 to have the sentencing?

13 A. Sir, I was on the payroll and everytime he called a
14 lawyer they charged him and so that's why he wanted to use
15 me.

16 Q. Now let's talk about the plea negotiations that you
17 testified about. Mr. Fairchild had testified in the Grand
18 Jury in July of 1984; is that right?

19 A. Yes, sir. I believe it was the 18th.

20 Q. And the 19th as well; isn't that right?

21 A. Well, it was continued over, yes, sir.

22 Q. And you were there with him?

23 A. Yes, I was.

24 Q. This is before he had had any kind of deals with the
25 Government; isn't that right?

- 1 A. Yes, sir.
- 2 Q. Pardon me?
- 3 A. To my knowledge.
- 4 Q. Then in September of 1984, Mr. Fairchild's indicted.
- 5 A. Yes, sir. I believe it was on the 6th of September.
- 6 Q. And he hired a lawyer. First one he hired was Mr.
- 7 Arendall; is that right?
- 8 A. No. He had Mr. Kepper advising him, Mr. Karl Kepper.
- 9 And always had Wallace Gunn advising him although he was not
- 10 a criminal attorney. But he had Mr. Karl Kepper, who he was
- 11 using for Drew, who was a criminal attorney. And then he
- 12 hired Mr. Arendall.
- 13 Q. Now, at this time Mr. Arendall -- this was in September
- 14 of '84 he hired Mr. Arendall; is that right?
- 15 A. Could have been late September, early October.
- 16 Q. At this point Mr. Arendall was telling him, Wiley,
- 17 you're guilty as hell; is that right?
- 18 A. Well, he told him that when he came back from the motion
- 19 hearing that Mr. Fairchild and Mr. Wiley and I did not go to
- 20 down in New Orleans. And he came back and we went in Mr.
- 21 Gunn's conference room and sat down and that's what he told
- 22 Mr. Fairchild.
- 23 Q. And when was this?
- 24 A. That was in, I guess, October of 1984.
- 25 Q. October of 1984?

1 A. September, October, sometime whenever the hearings were.

2 Q. You don't give it a date for that statement here in your
3 statement, do you, your second affidavit, Page 2, Paragraph
4 6?

5 A. I just said September of '84.

6 Q. So now you want to change that?

7 A. Mr. Fairchild was indicted, you know. And Mr. Fairchild
8 wanted an attorney who had connection with the Federal
9 Court. Mr. Charles B. Arendall of Mobile, Alabama, was
10 retained because he was a former law partner to a Federal
11 Judge in Alabama. Mr. Arendall advised Mr. Fairchild it did
12 not matter what his intentions were at the time he allowed
13 Judge Nixon to invest with him, he was guilty as hell, and
14 would probably be given an illegal -- convicted of giving
15 illegal gratuity to a Federal Judge.

16 Q. So --

17 A. So I didn't date it, no, sir.

18 Q. So you didn't date it?

19 A. No, sir, I didn't.

20 Q. It appears from this, though, that it's September; is
21 that right?

22 A. No, sir, it doesn't. It was sometime after early
23 September is when it was.

24 Q. Because in the next paragraph, No. 7, now you're moving
25 into October; is that right?

1 A. That was the next month, yes, sir.

2 Q. But this statement from Mr. Arendall isn't mentioned in
3 the October affidavit, is it?

4 MR. STEWART: Objection. He's arguing inferences
5 from dates.

6 MR. COLE: I'm just asking him, Your Honor --

7 THE COURT: Overrule. It's cross-examination.

8 A. They were just some other things that happened and I
9 remember them as being in October.

10 Q. Okay. So after that, after this attorney told him he'd
11 be convicted -- Mr. Gunn, what was he saying?

12 A. He was not a criminal attorney.

13 Q. He had no opinion on the matter?

14 A. No, sir. He didn't try to get out of his field. He was
15 there to, you know, talk with Mr. Fairchild.

16 Q. How about Mr. Kepper? What was his opinion?

17 A. He wasn't there, as I recall.

18 Q. So the only opinion being given on the subject was for
19 Mr. Arendall at first; is that right?

20 A. Yes, sir. He cited a Rico situation.

21 Q. And then after that Mr. Hess came in, after Mr.
22 Arendall?

23 A. Yes, sir. Mr. Arendall said that he was not a criminal
24 attorney and that Mr. Fairchild would need a criminal
25 attorney because it said that if you give a Judge a gratuity,

1 anything you did before or during or later on would be
2 criminal contempt. So he said if I were in trouble, I would
3 call Barry Hess. He's an attorney in Mobile.

4 Q. Just so I can get this straight. The first advice that
5 Mr. Fairchild is getting comes from Mr. Arendall?

6 A. No, sir. The first advice came from Mr. Kepper.

7 Q. And what did he say?

8 A. About what?

9 Q. We're talking about this whether Wiley's guilty as hell
10 and what kind of advice he's getting from his attorneys.

11 A. He told Mr. Fairchild he didn't think he was guilty.
12 But if he got convicted he was going to make a plea before
13 the jury and all. But he didn't have the -- you know, he
14 didn't have the libraries and things that these Mobile
15 attorneys had.

16 Q. So in comes Mr. Arendall?

17 A. Yes, sir.

18 Q. In October?

19 A. September, October, yes, sir.

20 Q. And he says you're guilty as hell?

21 A. Right.

22 Q. Then in comes Barry Hess?

23 A. Yes, sir.

24 Q. What does he say, guilty as hell?

25 A. Yes, sir. He said they'll put the handcuffs on you and

1 you will be in prison while your appeal is going on; it
2 normally takes 18 months to get an appeal so you will have
3 served your sentence by the time you get out.

4 Q. Now, this information coming to Mr. Fairchild, is that
5 what made him start to negotiate with the Government as far
6 as a plea?

7 A. He might have just been getting tired.

8 Q. But it wasn't until after his attorneys were telling him
9 he was guilty as hell and about to go off to the hoosegow
10 that he started to even talk to the Government about plea
11 negotiations; is that right?

12 A. Right.

13 Q. And that started in October, you say?

14 A. September, October, yes, sir.

15 Q. September, October?

16 A. Right.

17 Q. Now, if it started in September that meant Mr. Arendall
18 had to have been hired in September; is that right?

19 A. He may have been. We can check his bill and find out.

20 Q. Now you said there were meetings with Reid Weingarten in
21 October of 1984; is that right?

22 A. Yes, sir.

23 Q. How many?

24 A. Several.

25 Q. More than three, less than ten?

1 A. Probably. In October?

2 Q. Uh-huh.

3 A. Probably three or more and less than ten, yes, sir.

4 Q. How were your relationships with him at that time?

5 A. Fine.

6 Q. No problems?

7 A. With Mr. Weingarten?

8 Q. Yeah.

9 A. I don't think I've got any problem with Mr. Weingarten.

10 Q. Okay. Who else was at these meetings?

11 A. Well, it would vary. Sometimes Mr. White-Spunner and
12 Mr. Lawless or sometimes just Mr. White-Spunner would be with
13 him. Sometimes Mr. Kennedy.

14 Q. Wouldn't be alone, would he?

15 A. Yes, sir, sometimes he would be alone.

16 Q. Sometimes he would be alone?

17 A. Yes, sir.

18 Q. Who was there for you, for your side?

19 A. I didn't have a side. I was working for Mr. Fairchild.

20 Q. Mr. Fairchild's been indicted, he's on one side of the
21 case, Mr. Weingarten's the prosecutor, he's on the other.

22 You told me who was there for the Government's side. Now
23 tell me who was there for Mr. Fairchild's side.

24 A. Me.

25 Q. Just you?

1 A. Right.

2 Q. No lawyers there?

3 A. No.

4 Q. And you're negotiating a plea, talking about pleas with
5 the Government for Mr. Fairchild; is that what you're telling
6 us?

7 A. Yes.

8 Q. Never went to law school, did you?

9 A. No.

10 Q. Don't have a license to practice law either, do you?

11 A. No, sir. I wasn't practicing law.

12 Q. Who asked for these meetings?

13 A. Well, sometimes I would, sometimes he would. But more
14 often he would.

15 Q. He being?

16 A. Mr. Weingarten.

17 Q. So he kept asking you to come on back each time; is that
18 right?

19 A. Yes, sir. Or Mr. Kennedy up here in Jackson.

20 Q. And he'd say we need a "smoking gun". You got to give
21 us a "smoking gun". And you'd walk away with your hands up
22 and say I don't have anything; is that right?

23 A. Go look for one. One time, you know, I thought Carroll
24 Ingram would be the "smoking gun" and they told me I couldn't
25 get Carroll to talk to them but I did.

1 Q. So then Mr. Fairchild comes up with a "smoking gun"; is
2 that right?

3 A. Yes, sir. He came up with several but none of them
4 turned out to be a "smoking gun" according to Mr. Weingarten.

5 Q. So at this point he wanted to cooperate with the
6 Government; is that right?

7 A. Mr. Fairchild?

8 Q. Yeah.

9 A. Yes, sir. He was trying to find a "smoking gun". He
10 was going to jail, you know, been indicted and told he was
11 guilty as hell.

12 Q. So all these meetings, three or more meetings in
13 October, Mr. Fairchild wants to cooperate but he can't come
14 up with the goods; is that what you're saying?

15 A. He was trying to, yes, sir.

16 Q. And he did come up with some things that he told you
17 about; is that right?

18 A. Yes, sir.

19 Q. But they weren't credible; is that right?

20 A. Some of them were, yes, sir.

21 Q. What were those?

22 A. Well, he came up that Bill Porter had been killed out at
23 the islands because they had a 360,000-dollar note signed by
24 Bud Holmes and Jim Dukes. Credit Life Insurance policy on it
25 they wanted to settle. He told about this man, Preacher

1 Shows, and that he was being sent to jail or his son was by
2 Judge Nixon and that he had sent the doctor's son to -- or
3 Preacher Shows to Bud Holmes to talk to him about getting his
4 sentence reduced. He told some things about Carroll Ingram.
5 Told about the telephone call.

6 Q. Now, you said in your affidavit that some of these
7 things were so incredible that you convinced Mr. Fairchild
8 not to tell them to the Government; is that right? Which
9 ones are those?

10 A. Gee, there were several that came up. You know, you get
11 started on a story and would say, hey, they're not going to
12 believe that.

13 Q. So then we got late in October, 1984, Mr. Fairchild
14 finally tells you about the phone call; is that right?

15 A. Sometime in the area, yes, sir.

16 Q. First time he ever mentions it; is that right?

17 A. Yes, sir.

18 Q. And you come up with some quotes here on Page 4 of your
19 second affidavit of what Mr. Fairchild said. Again, those
20 quotes -- you have them in quotes because you're sure those
21 are the exact words; is that right?

22 A. Yes, sir. Mr. Fairchild went over that so many times
23 that I'm sure that's what -- I was quoting him.

24 Q. And you're quoting him from the time when he's telling
25 you about this during the ride back from Jackson; is that

L

1 right?

2 A. Yes, sir.

3 Q. This is before there's a plea bargain with the
4 Government; isn't that right?

5 A. Yes, sir.

6 Q. And the quote that he tells you is, quoting Judge Nixon,
7 I'm just reading the quoted portions: You know that matter
8 we were talking about this afternoon, I am out here with that
9 fellow and everything is going to be all right. Those were
10 his exact words from Judge Nixon; is that right?

11 A. Exact words from Mr. Fairchild?

12 Q. From Mr. Fairchild relating what Judge Nixon had told
13 him on the telephone.

14 A. Yes, sir.

15 Q. He then went on to say that Bud Holmes gets on the phone
16 and, quote, when this man asks me to do something, I do it,
17 closed quote. That's Mr. Fairchild's exact words to you as
18 to what Bud Holmes said; is that right?

19 A. Yes, sir.

20 Q. Now, you say that he said that Bud Holmes placed the
21 call first; is that right?

22 A. Yes, sir.

23 Q. But otherwise this is the exact conversation that he
24 related to you, who said what to him, and in what order; is
25 that right?

1 A. Yes, sir.

2 Q. Before he's ever been to the Government; is that right?

3 A. Uh-huh.

4 Q. And this is exactly, other than who placed the call,
5 what Mr. Fairchild testified to at trial, isn't it, as far as
6 that conversation goes?

7 A. Probably so, yes, sir.

8 Q. Mr. Fairchild also said at that time before a plea
9 bargain with the Government that the phone call had followed
10 a meeting with Judge Nixon that day at his office, didn't he?

11 A. Yes, sir.

12 Q. And he said at that meeting he had complained about Bud
13 and Carroll Ingram blackmailing him?

14 A. Yes.

15 Q. This is all before the plea bargain with the Government,
16 isn't it?

17 A. Yes, sir.

18 Q. And he said that that meeting came right on the heels,
19 within a day or two, of when Royals visited him, didn't he?

20 A. Yes, sir. He said that's what made him mad was Bob
21 Royals trying to -- he thought that Bob Royals was giving him
22 a message that Bill Porter wanted this money.

23 THE COURT: That Bill Porter what?

24 A. Wanted some money.

25 THE COURT: Wanted money.

1 Q. And this is exactly what he testified to at trial, isn't
2 it, on these facts?

3 A. All right, sir.

4 Q. Is it?

5 A. I'd have to read his testimony to know, but I'll take
6 your word for it.

7 Q. Now, according to your affidavit, Mr. Baltar, after that
8 you called Reid Weingarten or one of Mr. Fairchild's
9 attorneys called Mr. Weingarten; is that right? To tell him
10 this news?

11 A. Yes, sir.

12 Q. Do you know which one it was?

13 A. No, sir, I don't.

14 Q. Do you think it might have been you because Mr.
15 Fairchild didn't want to spend a buck on his attorney?

16 A. Possibly could have been, yes, sir. That's why I said
17 that.

18 Q. And then you told Reid personally this story?

19 A. Yes, sir. If I called him I would have told him the
20 story.

21 Q. And --

22 A. We talked about it, you know, a lot of times.

23 Q. And this was over the telephone?

24 A. Yes, sir.

25 Q. And you arranged for a meeting; is that right?

- 1 A. Yes, sir.
- 2 Q. And that meeting occurred on November 1, 1984?
- 3 A. I believe, yes, sir.
- 4 Q. And what you have here in Paragraph 9 of your second
5 affidavit is the exact story you told Reid Weingarten that he
6 would hear at the proffer on November 1st; is that right?
- 7 A. Well, not, you know, not all of Paragraph 9 but that
8 part of it, yes, sir.
- 9 Q. Which part?
- 10 A. About the call.
- 11 Q. Did you tell him anything more?
- 12 A. Those quotes that you came up with.
- 13 Q. Pardon me?
- 14 A. Those quotes that you read.
- 15 Q. Did you tell him anything more than that?
- 16 A. Yes, sir. We discussed a lot of things in there.
- 17 Q. Any more facts that would come out on Wiley Fairchild?
- 18 A. About Preacher Shows' deal, yes, sir.
- 19 Q. Any other facts? You tell me what they were.
- 20 A. Well, we told him about the Preacher Shows thing and
21 Judge Nixon and so forth. Told him about the phone call.
- 22 Q. Did you tell him that there was any connection between
23 the phone call and Drew Fairchild's case?
- 24 A. Mr. Weingarten said when it had to have happened was
25 prior to it being passed to the files.

1 Q. Did you tell him there was any connection between the
2 oil and gas deal that was given to Judge Nixon in Drew
3 Fairchild's case?

4 A. No, sir, I did not.

5 Q. And this is the sole way that the information got to the
6 Government of what Mr. Fairchild had to say is either you
7 calling or one of Mr. Fairchild's attorneys calling Mr.
8 Weingarten?

9 A. As far as I know, sir. I don't know who else could
10 have.

11 Q. Best of your recollection that's how it happened.

12 A. Right.

13 Q. Now, when you met with Mr. Weingarten on November 1st he
14 said that Wiley was going to have to say that the matter, the
15 phone call, occurred prior to the case being passed to files
16 to get a pleading; is that right?

17 A. He said that that's when it occurred. That they had
18 information. You know, they couldn't verify the information
19 about the Joe Chrone and all that kind of stuff. And I had
20 to go back the next day and they said there wasn't a "smoking
21 gun".

22 Q. The question I'm asking you is: Did he tell Wiley that
23 he had to testify that the deal had occurred -- that the
24 phone call, excuse me, had occurred before the case was
25 passed to files?

- 1 A. I don't remember if he did that day or not but, you
2 know, at one time he did, yes, sir.
- 3 Q. Let's go to your affidavit again.
- 4 A. Okay, sir.
- 5 Q. Page 5, Paragraph 11.
- 6 A. Okay.
- 7 Q. This paragraph is about the November 1st meeting, isn't
8 it?
- 9 A. Yes, sir.
- 10 Q. And look at the second paragraph of Paragraph 11.
- 11 A. Okay.
- 12 Q. Mr. Weingarten told Mr. Fairchild that the phone call
13 was made before Drew Fairchild's case was passed to the files
14 by Bud Holmes. Mr. Weingarten stated that Mr. Fairchild
15 would have to testify that Judge Nixon had placed the phone
16 call and that this occurred prior to the case being passed to
17 files in December of '82. It was clear that if Mr. Fairchild
18 could provide that testimony then a plea bargain would be
19 possible.
- 20 A. Yes, sir.
- 21 Q. Does that refresh your recollection?
- 22 A. Yes, sir.
- 23 Q. So Mr. Fairchild did on that day have to say that; is
24 that right?
- 25 A. We didn't make --

1 Q. That's what you're saying here, isn't it?

2 A. We didn't make a plea bargain on that day, we made a
3 proffer.

4 Q. I understand that. But Mr. Weingarten, according to
5 you, is saying that Mr. Fairchild is going to have to include
6 in his proffer that the phone call occurred prior to the case
7 being passed to files.

8 A. Yes, sir.

9 Q. He said that that day.

10 A. Uh-huh.

11 Q. And did Mr. Fairchild agree to that?

12 A. Yes, sir.

13 Q. Let's show you Exhibit 12, Mr. Baltar. That's the
14 transcript of the proffer, isn't it?

15 A. Yes, sir.

16 Q. Show me where it says that in the proffer.

17 A. Where it says what, sir?

18 Q. That Mr. Fairchild -- that the phone call occurred prior
19 to the case being passed to files. I can help you out a
20 little bit. The beginning of it's all about Preacher Shows.
21 And it doesn't really start with anything concerning the oil
22 deal with Judge Nixon until the very bottom of Page 5.

23 A. We're getting back to the telephone call on Page 7.

24 Q. Just tell me where it says that, Mr. Baltar.

25 A. Page 8. So that night I had just laid down, the phone

1 rang, and a voice says Wiley, the man that we talked about
2 this evening, I'm over at his house, he says, and I've talked
3 to him and things are going to be all right. I said well,
4 good. Who called you? Judge Nixon.

5 Q. Tell me where it says that this occurred before the case
6 was passed to files.

7 A. It doesn't say it in that.

8 Q. It doesn't say that, does it?

9 A. In that particular case, no, sir.

10 Q. But you just told us Mr. Weingarten required this from
11 Mr. Fairchild as part of the proffer before he could get a
12 deal. It's not here, is it?

13 A. No. He required it after his plea bargain whenever he
14 went to the second Grand Jury thing to bring it up.

15 Q. That's not what your affidavit says, Mr. Baltar. It
16 says Mr. Weingarten required it on November 1st; and you just
17 testified here in Court, did you not, that it was required
18 that day and that Mr. Fairchild agreed to it that day to put
19 it in the proffer?

20 A. Where are you on this?

21 Q. I'm on Page 5 of your second affidavit.

22 A. Okay, sir. We had been there two or three hours and it
23 wasn't -- everything's not on this little piece of paper.

24 Q. This was a pretty important thing, wasn't it?

25 A. His proffer?

1 Q. His proffer and this point of the proffer as far as
2 you're concerned. You've told us you only put the important
3 stuff in this affidavit, right?

4 A. Plea bargain and, you know.

5 Q. Doesn't it say here, Mr. Baltar: After two or three
6 hours of discussion and after we felt comfortable Mr.
7 Fairchild could say the things Mr. Weingarten wanted him to
8 say, which includes the paragraph just above it.

9 A. Uh-huh.

10 Q. You went in and taped the proffer.

11 A. Yes, sir.

12 Q. That important point, Mr. Baltar, is nowhere in this
13 proffer, is it?

14 A. No, sir. But, you see, I didn't prepare a script for
15 Mr. Fairchild for this one. That was why we had to prepare a
16 script for him.

17 Q. And nobody asked him either, did they, at this proffer?

18 A. No, sir. It was being taped.

19 Q. Nobody even asked him the question when it was --

20 A. No, they just got the basic thing about the phone call.

21 Q. And nobody asked him when the phone call was placed in
22 relation to when it was passed to files, did they?

23 A. I guess not, no, sir.

24 Q. Yet you say it was a major point of conversation for the
25 plea bargain that day, Mr. Baltar.

1 A. Yes, sir.

2 Q. Also in part of that proffer let's talk about Page 6.

3 A. Of what, sir?

4 Q. Of the proffer.

5 A. Okay.

6 Q. Right at the top. Mr. Stewart had asked you about this
7 paragraph and this question and answer. Here Mr. Fairchild
8 is saying, looking at the end of it: I put him in three
9 different deals that I thought would pay off good because I
10 was scared not to although three months before my son had
11 done his plea bargain with George. That's George Phillips,
12 right?

13 A. Yes, sir.

14 Q. Now, the plea bargain with George was done in November,
15 wasn't it?

16 A. Of what, 1980?

17 Q. Of 1980. If you need to refresh yourself, Mr. Baltar,
18 you can look at another one of the scripts you wrote, Exhibit
19 18. Do you want to look at that?

20 Now, under this script, Exhibit 18, you've got: August
21 4, airport drug bust; November 19, plea bargain.

22 A. Uh-huh.

23 Q. Now, here in the proffer we've got Mr. Fairchild talking
24 about how he had put Judge Nixon in the deal three months
25 after the deal with George; is that right?

1 A. Yes, sir.

2 Q. That's not the way you have it on your script here, is
3 it?

4 A. No, sir. It's between August the 4th, the drug bust,
5 and November 8 of 1980. That's when Mr. Weingarten wanted to
6 put it.

7 Q. Mr. Weingarten seems to be happy with this answer that's
8 being given here, doesn't he?

9 MR. STEWART: Objection.

10 THE COURT: I'll sustain.

11 Q. Mr. Baltar, isn't what Wiley Fairchild was talking about
12 at this time the signing of the deeds for the oil leases, not
13 Carroll Ingram's approach, but the signing of the deeds? And
14 that happened three months after the plea bargain with George
15 Phillips.

16 A. I don't know, sir. I was not there.

17 Q. You were there at the proffer.

18 A. Yes, sir, I was.

19 Q. You've offered to this Court under oath your opinion of
20 what Mr. Fairchild meant when he said this in the proffer.

21 MR. STEWART: Objection, Your Honor. If the
22 witness can be given a chance to read that entire passage.

23 THE COURT: Go ahead, Mr. Baltar.

24 MR. STEWART: From the question on the preceding
25 page.

1 A. Of the proffer?

2 MR. STEWART: Yes, sir.

3 A. Okay. I'd say that's when Carroll came to him to put
4 Judge Nixon in the deal.

5 Q. That's your interpretation.

6 MR. STEWART: Objection. He's arguing.

7 THE COURT: I don't think it says interpretation
8 but let's get back to what the question you wanted to ask
9 him, Mr. Cole.

10 MR. COLE: All right. I've covered enough
11 questions with him on this, Your Honor. I'll move on.

12 Q. Also at that proffer before the taping, Mr. Baltar, you
13 said Mr. Weingarten was going to require that Mr. Fairchild
14 admit that the oil and gas investment with Judge Nixon was a
15 gratuity; is that right?

16 A. (Nodding head.)

17 THE COURT: You've got to speak out loud.

18 A. Yes, sir.

19 Q. And that's the count he pled to; isn't it?

20 A. To the oil and gas?

21 Q. Yes.

22 A. Yes, sir.

23 Q. And what he pled to had nothing to do with Drew's case.

24 A. No, sir.

25 Q. Then you also say that Mr. Weingarten said that the oil

1 and gas investment had been entered into after Drew
2 Fairchild's drug bust in 1980, August of 1980. That's when
3 the deeds were signed; isn't that true?

4 A. Mr. Fairchild started off saying that 1979 was when he
5 made the deal but then the deeds were signed in 1981 and back
6 dated to 1980.

7 Q. Entering into a deal could also mean signing the deeds,
8 couldn't it?

9 A. Yes, sir. Or a verbal agreement either one.

10 Q. Now, Mr. Baltar, let's talk a little bit about what
11 really happened leading up to the plea.

12 MR. STEWART: Objection to this, Your Honor.

13 THE COURT: Well, it's a non-jury case. I
14 understand. We don't need profferatory remarks. Go ahead.

15 Q. Mr. Baltar?

16 A. Yes, sir.

17 Q. Do you know a man named Ed Pittman?

18 A. Yes, sir.

19 Q. Who is he?

20 A. Who is he?

21 Q. Who is he?

22 A. He's an attorney from Jackson.

23 Q. Back in 1984, what job did he hold?

24 A. He was Attorney General in '84, State of Mississippi.

25 Q. Did you talk to him about this case?

1 A. Could have.

2 Q. Do you remember whether you did or not?

3 A. Probably did. He and I've been friends for a long time.

4 Q. Did you visit with Mr. Pittman personally at his home on
5 the 28th of October, 1984?

6 A. Could have.

7 Q. Did you talk to him about the case at that time?

8 A. Could have.

9 Q. You don't remember?

10 A. Well, October the 28th was the date that --

11 Q. It was a Sunday.

12 A. October 28th of '84 was a Sunday?

13 Q. Uh-huh.

14 A. Okay.

15 Q. Do you recall that?

16 A. Sir, I've been through this half a million times. I
17 don't recall that particular date.

18 MR. STEWART: Objection, Your Honor. If we're
19 getting into something there's a witness for, I think there's
20 been a whole lot of sandbagging here.

21 THE COURT: I want the lawyers up here, please.

22 (At the bench off the record.)

23 THE COURT: Put us in recess until 3:00 o'clock.

24 (Recess.)

25 Q. Mr. Baltar, when we broke for lunch, I was asking you if

1 you knew Attorney General Ed Pittman. I believe your answer
2 was yes, you did.

3 A. Yes, sir.

4 Q. Do you recall visiting him on Sunday the 28th of October
5 of 1984?

6 A. Not specifically, no, sir.

7 Q. Did you ever contact Attorney General Pittman concerning
8 Mr. Fairchild's case?

9 A. I did talk with him periodically, yes, sir.

10 Q. Did you ever ask him to approach the Federal Government
11 on Mr. Fairchild's behalf?

12 A. I don't remember that, no, sir.

13 Q. Perhaps this will refresh your memory.

14 MR. COLE: Have you shown this to the witness?

15 THE COURT: What's the day on it?

16 MR. COLE: That's the October 30th, 1984, memo from
17 Weldon Kennedy to files. I want you to just look at that,
18 Mr. Baltar.

19 A. All right, sir.

20 MR. STEWART: Your Honor, I want to make one
21 objection here. There are three documents involved here
22 we've been given. This happens to be the one document that
23 does not relate what Mr. Baltar himself said. It's third
24 hand.

25 MR. COLE: This is a refreshing of recollection. I

1 could use a cup of coffee if I wanted to.

2 THE COURT: If that's an objection, I'll overrule.

3 MR. STEWART: May I approach, Your Honor?

4 THE COURT: Yes.

5 (At the bench off the record.)

6 MR. COLE: Your Honor, may I first ask the
7 foundational question?

8 THE COURT: Yes.

9 Q. Mr. Baltar, does that refresh your recollection?

10 A. No, sir. Because there's some things in here that I've
11 never even heard of before.

12 Q. Then, Mr. Baltar, let me just ask you one other question
13 before I go on to this. Did you ever personally visit Weldon
14 Kennedy to talk about a plea arrangement for Wiley Fairchild?

15 A. Probably so, yes, sir.

16 Q. And was it as a result of a visit with Mr. Pittman?

17 MR. STEWART: Objection, Your Honor.

18 THE COURT: Overrule. He can answer. He ought to
19 know that.

20 A. I don't know that it was or not, sir.

21 Q. Mr. Baltar, let me give you an FBI Form 302 Report of
22 Interview with you.

23 A. Okay.

24 Q. Dated October 30, 1984. The writer of the form is
25 Weldon Kennedy; is that correct?

1 A. Yes, sir.

2 Q. He was the special agent in charge of the FBI here in
3 Jackson at the time; is that right?

4 A. Yes, sir.

5 Q. Did you meet with Mr. Kennedy on that date?

6 MR. STEWART: Objection, Your Honor. Is he
7 refreshing his recollection? He hasn't had a chance to read
8 it.

9 THE COURT: Do you need to read that, Mr. Baltar?

10 A. Yes, sir. There's two pages here I need to read to
11 answer any questions about it.

12 THE COURT: All right. The purpose is to refresh
13 your memory which to me means to look over and see if it
14 helps you out, then answer the questions. Not to study,
15 memorize, that kind of thing. Do you know the difference?

16 A. Yes, sir.

17 THE COURT: All right. Let him look at it.

18 A. All right, sir.

19 Q. Mr. Baltar, did you tell Weldon Kennedy that you had
20 visited Ed Pittman on the 28th of October, 1984, concerning
21 the Government's case against Wiley Fairchild?

22 A. That's what it says here; yes, sir.

23 Q. And did you tell Mr. Kennedy that Mr. Pittman had
24 recontacted you on October 30th, 1984, and told you that you
25 could contact Mr. Kennedy on your own?

1 A. Yes, sir. That's what it says.

2 MR. STEWART: Objection, Your Honor, if he's just
3 reciting the document.

4 THE COURT: Well, we're not together on this. His
5 question to you is did you tell them, not what this document
6 says. Do you understand the difference, Mr. Baltar?

7 A. Yes, sir. I don't recall -- I recall several times Mr.
8 Fairchild asked me to talk to Mr. Pittman about his case,
9 which I did. I do remember that Mr. Pittman talked with Mr.
10 Kennedy. I talked with Mr. Kennedy numerous times.

11 Q. Okay. When I ask you these questions, Mr. Baltar, just
12 so we understand, I'm asking whether it is true or not. Not
13 whether the document says it but whether it's true or not.

14 A. All right, sir.

15 Q. When you talked to Weldon Kennedy on October 30th, 1984,
16 did you tell him that Mr. Fairchild was seeking immunity from
17 prosecution?

18 A. Probably did, sir. Mr. Fairchild was seeking that at
19 one time.

20 Q. Did you then go on to tell Mr. Kennedy that Mr.
21 Fairchild has been receiving bad advice from his attorneys?

22 A. Probably so.

23 Q. And that his attorneys had been counseling him against
24 cooperating with the United States Government. Did you tell
25 him that on the 30th of October?

1 A. I don't remember doing that. I sure don't.

2 Q. Do you remember telling Mr. Kennedy that Mr. Fairchild's
3 attorneys had informed Mr. Fairchild that the Government's
4 case against him was not solid; do you remember telling him
5 that?

6 A. Telling him what now?

7 Q. Telling Mr. Kennedy that Mr. Fairchild's attorneys at
8 the time had been telling Mr. Fairchild that the Government's
9 case was weak or was not solid against Mr. Fairchild; do you
10 remember telling Mr. Kennedy that?

11 A. No, sir, I don't.

12 Q. Do you remember telling Mr. Kennedy that Mr. Fairchild's
13 attorneys had told him that if he was going to cooperate with
14 the Federal Government and testify against others, it would
15 not be in Mr. Fairchild's interests; remember telling Mr.
16 Kennedy that?

17 A. No, sir, I don't.

18 Q. Do you remember telling Mr. Kennedy that Mr. Fairchild's
19 lawyers had told him that the men who were being investigated
20 in this rather large ranging investigation were honorable men
21 and nobody had done anything wrong and Wiley shouldn't
22 cooperate. Remember telling Mr. Kennedy that?

23 A. No, sir, I don't.

24 Q. This is all a different story than you've told in the
25 courtroom today, isn't it?

1 A. Well, there's some things in here that Ed told Mr.
2 Kennedy. First time I've ever heard of them but go ahead.

3 Q. I'm talking about now what you told Mr. Kennedy.

4 A. Right. On the telephone.

5 Q. This is a visit with Mr. Kennedy. I believe it was on
6 the telephone, that's correct.

7 A. I believe it says on the telephone.

8 Q. And do you recall telling Mr. Kennedy that at this point
9 Wiley Fairchild had finally decided instead of taking his
10 lawyer's advice he was going to cooperate fully with the
11 Government and tell the whole story; do you recall that?

12 A. Well, this was right before we came up here to make a
13 proffer and --

14 Q. Excuse me, Mr. Baltar. My question is: Do you recall
15 saying that to Mr. Kennedy?

16 A. No, sir.

17 Q. Do you recall telling Mr. Kennedy that you were
18 reluctant to provide details at this point but it would
19 certainly be worth the Government's while to accept Mr.
20 Fairchild's terms because his testimony would be extremely
21 helpful on the Government's case; do you recall telling him
22 that?

23 A. No, sir, I don't. But I was probably just, you know,
24 giving him information directly from Mr. Fairchild. So I
25 didn't -- you know, probably wasn't fully aware of what he

1 had to say.

2 Q. Do you recall telling Mr. Kennedy that one of the items
3 of evidence would concern a telephone call to Mr. Fairchild
4 from Bud Holmes with Judge Nixon on the line and that this
5 call had something to do with the prosecution of Drew
6 Fairchild?

7 A. I would imagine, you know --

8 Q. I'm not asking for you to imagine, Mr. Baltar. I'm
9 asking whether you remember saying that to Mr. Kennedy on the
10 30th of October.

11 A. No, sir. We had -- you know, 30th of October and the
12 1st of November, the 2nd of November, all right together, so
13 maybe one of those three days we did talk about it. But I'm
14 sure that, you know, Mr. Kennedy didn't just make up the fact
15 that I called him.

16 Q. Do you recall telling Mr. Kennedy that you wanted to
17 have a meeting with Reid Weingarten as soon as possible so
18 that Mr. Fairchild could finally tell the full story; do you
19 recall that?

20 A. I don't remember those words but I did, you know, say me
21 or one of the attorneys contacted Mr. Weingarten or somebody
22 to get it set up.

23 Q. Well, here you contacted Mr. Kennedy; is that right?

24 A. Yes, sir.

25 Q. Not Mr. Weingarten.

1 A. I probably contacted Mr. Weingarten.

2 Q. Do you remember calling Mr. Kennedy back that day a
3 second time, the 30th of October, 1984?

4 A. No, sir, I don't.

5 Q. Do you remember again reiterating Mr. Fairchild wanted
6 immunity from the Federal Government?

7 A. I remember Mr. Fairchild wanting immunity, yes, sir. He
8 said they offered him immunity when they first walked in. He
9 didn't take it under the advice of his attorneys and he
10 hadn't done anything wrong and now he wanted immunity.

11 Q. Do you recall telling Mr. Kennedy that Mr. Fairchild
12 would provide testimony detailing extremely important
13 information which would be of invaluable assistance to the
14 United States Government; do you remember that?

15 A. I remember telling him that Mr. Fairchild -- let's see.
16 I remember telling him, you know, or telling someone about
17 the fact that he wanted immunity. And I guess it was Mr.
18 Kennedy.

19 Q. We're not talking about immunity anymore, Mr. Baltar.
20 We're talking about whether you told Mr. Kennedy that Mr.
21 Fairchild could provide testimony detailing extremely
22 important information which would be of invaluable assistance
23 to the United States Government.

24 A. I possibly did. Mr. Fairchild probably said that.

25 Q. Sounds an awful lot like a "smoking gun", doesn't it?

1 A. Yes, sir. But the next statement --

2 Q. Mr. Baltar, if I can ask my questions.

3 A. Okay. Is entirely false.

4 Q. You've anticipated my question. Why don't we get it out
5 fully on the record and then you can tell me your answer. Do

6 you recall telling Mr. Kennedy that Mr. Fairchild from the
7 outset of this case had been under extreme pressure by Bud
8 Holmes and others to transfer the royalties to Judge Nixon?

9 A. I don't ever remember Mr. Fairchild saying that he was
10 under pressure from Bud Holmes to have anything to do with
11 the transferring oil.

12 Q. You see, Mr. Baltar. There's a difference between the
13 question you just answered and the one I asked. I'm not
14 asking you what Wiley Fairchild told you.

15 A. Okay.

16 Q. I'm asking you what you told Weldon Kennedy.

17 A. All right, sir.

18 Q. The two could be different.

19 A. Yes, sir.

20 Q. Do you recall telling Weldon Kennedy that from the
21 beginning of the case Mr. Fairchild had been under extreme
22 pressure by Bud Holmes and others to transfer royalties to
23 Judge Nixon?

24 A. No, sir, I don't.

25 Q. Did you tell Mr. Kennedy that Wiley Fairchild felt that

1 these payments were being extorted from him because of his
2 son's prosecution?

3 A. That's what I told him the first time I called him on
4 April 6. That was a problem. That was why I called him. I
5 don't remember telling him that again, no, sir.

6 Q. No. Mr. Baltar, if you'll read this and listen to my
7 question, it's that the royalties were being extorted from
8 him. The oil deal was being extorted from him because of his
9 son's prosecution.

10 MR. STEWART: Objection, Your Honor. He's now
11 arguing with the witness about an item he's not willing to
12 introduce into evidence that is being used to refresh
13 recollection.

14 MR. COLE: Your Honor, I'm merely asking him if he
15 said something.

16 THE COURT: He's got the statement in front of
17 him. And the question is whether you said this in the
18 context that it's there, Mr. Baltar.

19 A. I do not remember it, Judge.

20 Q. Do you recall again asking Mr. Kennedy a number of times
21 during your two conversations with him if the Federal
22 Government would be willing to dismiss all charges against
23 Mr. Fairchild?

24 A. Probably did. That was the purpose.

25 Q. And do you recall, Mr. Baltar, that this was what

1 brought about the proffer that was given on November 1st,
2 this contact with Mr. Kennedy?

3 A. Yeah. I don't recall, but I knew that it occurred at
4 sometime.

5 Q. November 1st --

6 THE COURT: What had occurred at sometime?

7 A. Talking to Mr. Weingarten or Mr. Kennedy about the --
8 talking to the Government about a proffer for Mr. Fairchild.

9 Q. Now, Mr. Baltar, the statements contained in this 302
10 that I've shown you are substantially more serious and more
11 damning to Judge Nixon and Bud Holmes than what Mr. Fairchild
12 actually came up with in the proffer; isn't that correct?

13 A. I would think, yes, sir.

14 Q. And so when the Government -- strike that.

15 At the time of the proffer, Mr. Fairchild did not
16 provide this information, did he?

17 A. He provided about the telephone call, yes, sir.

18 Q. He did. But he didn't provide anything about being
19 extorted for the oil royalties in return for his son's
20 prosecution, did he?

21 A. No, sir. I had heard that.

22 Q. And you didn't hear it at the proffer?

23 A. No, sir.

24 Q. Now, when the plea agreement -- after the proffer you
25 didn't get an answer from the Government on your request that

1 you had made to Mr. Kennedy on the 30th of October for
2 immunity, did you? They didn't give you an answer on the 1st
3 of November, did they?

4 A. I don't recall, sir. But they never did give an
5 indication, you know, that they would give him immunity from
6 prosecution.

7 Q. I understand that. But they never gave you an answer on
8 the 1st of November; isn't that right?

9 A. No, sir.

10 Q. You had a meeting with them on the 2nd of November?

11 A. Yes, sir.

12 Q. And in that meeting, that was when they told you Mr.
13 Fairchild's proffer was not good enough to get immunity;
14 isn't that right?

15 A. I don't remember it saying immunity but it may have.

16 Q. Do you recall the exhibit that Mr. Stewart showed you,
17 Exhibit 16? I believe you said that that was pretty
18 accurate.

19 A. Well, to dismiss the charges, yeah. Does that mean the
20 same thing as immunity?

21 Q. Does it mean the same thing to you as immunity?

22 A. No, sir.

23 Q. In both situations, nobody gets prosecuted, right?

24 A. Okay.

25 Q. And isn't it a fact that on the 2nd, the Government told

1 you after you on the 30th had asked Mr. Kennedy for immunity
2 that what Mr. Fairchild had to offer wasn't good enough;
3 isn't that right?

4 A. That I told Mr. Kennedy?

5 Q. You had asked Mr. Kennedy on the 30th of October for
6 immunity and you made a proffer to Mr. Kennedy of what Mr.
7 Fairchild would say; is that right?

8 A. Mr. Fairchild made the proffer on the 1st.

9 Q. I'm talking about what you said to Mr. Kennedy.

10 A. I thought the proffer was a form and everything you had
11 to fill out.

12 Q. You told Mr. Kennedy what Mr. Fairchild was going to
13 say, didn't you, on the 30th?

14 A. I told him he had some information, yes, sir.

15 Q. Did you tell him what this information was?

16 A. I don't know that I fully knew everything, but I told
17 him I guess whatever was on there.

18 Q. When the plea agreement was made, the Government had
19 offered you to give back to Mr. Fairchild, to send back to
20 him, Mr. Fairchild could plead guilty to one count; no
21 immunity, but he could plead guilty to one count; isn't that
22 right?

23 A. When the plea agreement was made?

24 Q. On the 2nd of November.

25 A. When I came up after the proffer?

1 Q. Right. They told you no immunity, but he can plead
2 guilty to one count and we'll dismiss the other count; is
3 that right?

4 A. Yes, sir.

5 Q. And it required his truthful cooperation in addition; is
6 that right?

7 A. Uh-huh.

8 Q. And you didn't accept that plea agreement on behalf of
9 Mr. Fairchild that day, did you?

10 A. Sir, I couldn't. I was only there to inform Mr.
11 Fairchild. I was not an attorney.

12 Q. But you didn't indicate one way or another what Mr.
13 Fairchild's feelings would be, did you?

14 A. It says I advised I would relay the message, however, I
15 felt that Fairchild definitely does not feel he ever did
16 anything wrong even though he knows it to be against the law.

17 Q. Is that accurate?

18 A. Yes, sir. The attorney told him it was against the law
19 and he still --

20 Q. No. I'm asking you is what it says there accurate that
21 you told them you didn't think Mr. Fairchild would accept the
22 deal?

23 A. Yes.

24 Q. So you went home?

25 A. So what?

1 Q. You went home.

2 A. Yes, sir.

3 Q. Did you tell Mr. Fairchild about the offer?

4 A. Yes, sir.

5 Q. What did he say?

6 A. Well, he said well, we got to provide them with a
7 "smoking gun", you know.

8 Q. So he was still thinking about getting a "smoking gun"
9 at that point?

10 A. Yes, sir.

11 Q. On the 2nd of November? He didn't accept a plea
12 agreement until roughly the 20th of November; isn't that
13 right?

14 A. 26th, I believe.

15 Q. And about the 20th is when Mr. Hess came to an agreement
16 with Mr. Weingarten that there would be a plea for Mr.
17 Fairchild; isn't that right?

18 A. You'd have to ask Mr. Hess. He was in Mobile.

19 Q. Did you see a letter on the matter at some point from
20 Mr. Weingarten to Mr. Hess?

21 A. I think we had notice from Mr. Hess prior to the 26th
22 that it would be coming up on the 26th.

23 Q. That the plea would be coming up on the 26th?

24 A. Yes, sir.

25 Q. I'd like to show you Exhibit B. Did you ever see that

1 letter? It's a letter from Mr. Reid Weingarten to Barry
2 Hess, dated the 20th of November.

3 A. Yes, sir.

4 Q. That's when the plea agreement was finally reached,
5 isn't it?

6 A. The letter says if a plea agreement is reached. I
7 wouldn't think it had been reached.

8 Q. Talks about what the terms will be finally; isn't that
9 right?

10 A. We would expect continuing cooperation, including
11 complete truthful testimony before the Grand Jury and any and
12 all trials that may follow this investigation in the event
13 that we conclude.

14 Q. Okay.

15 A. And it would be solely our determination that such
16 cooperation has been forthcoming, that we would recommend to
17 the Sentencing Judge that a prison sentence is not warranted
18 in this case.

19 Q. So the plea agreement wasn't even reached at that point?

20 A. No, sir.

21 Q. On the 20th.

22 A. No, sir. I believe November 26 is when it was.

23 Q. Okay. And according to your testimony, you heard from
24 Mr. Hess that there was this other little aspect to the plea
25 agreement; is that right?

- 1 A. The informal agreement?
- 2 Q. Yes.
- 3 A. Yes, sir.
- 4 Q. And you got it from Mr. Hess; is that right?
- 5 A. Yes, sir.
- 6 Q. And this note that you have here, Exhibit 17, that's a
7 note you wrote of a conversation with Mr. Hess; is that
8 right?
- 9 A. I don't know that I have 17, but I guess it is. There
10 is one that I don't have a copy of.
- 11 Q. Let me show you 17.
- 12 A. All right. Yes, sir. That's my writing.
- 13 Q. That's a note of your conversation with Barry Hess?
- 14 A. Yes, sir.
- 15 Q. It's not a note of your conversation with Reid
16 Weingarten?
- 17 A. No, sir.
- 18 Q. And Barry Hess is the one who provided you with the
19 information; is that right?
- 20 A. Yes, sir. He was Mr. Fairchild's attorney at that time.
- 21 Q. And I believe you said you were led to believe that this
22 was the agreement; is that right?
- 23 A. The informal agreement?
- 24 Q. Yeah.
- 25 A. Yes, sir.

1 Q. So it wasn't specific. You were -- just an impression
2 that you had developed?

3 A. Well, it was kind of a carrot held in front of Mr.
4 Fairchild.

5 Q. According to Mr. Hess?

6 A. No, sir. I think Mr. Hess probably heard the same
7 things I did.

8 Q. Well, then, why would you be having to write notes down
9 for Mr. Hess calling you?

10 A. Well, because when Mr. Hess called me he said the plea
11 agreement was to be set for 9:00 o'clock Monday the 26th;
12 it's going to be on the 3rd Floor, Judge Carr.

13 Q. He said what about the informal agreement?

14 A. He said still the same. He told what it was and I wrote
15 it down.

16 Q. Why did you have to write it down if you had already
17 known what it was?

18 A. So that I could verbatim give it to Mr. Fairchild.

19 Q. Did Mr. Hess tell you that this was really very unlikely
20 to ever occur?

21 A. No, sir.

22 Q. Never told you that?

23 A. No, sir.

24 Q. Did he tell you that Wiley Fairchild had virtually
25 confessed to a gratuity in his July Grand Jury and that,

1 based on that, there was virtually no chance the Government
2 was going to dismiss the case against him?

3 A. I think Barry had less hope than I did or Mr. Fairchild
4 did because he was a criminal attorney and we weren't. He
5 had been through these things before and we had not. But now
6 what he actually thought, I don't know.

7 Q. In your affidavit on this, Mr. Baltar, the way you
8 phrase it is that Mr. Weingarten stated that if there was no
9 connection between Mr. Fairchild's giving the oil and gas
10 leases to Judge Nixon and Drew Fairchild's case, there's no
11 connection between the two, the Government would drop the
12 gratuity charge; is that right?

13 A. Yes, sir. And in Mr. Weingarten's closing arguments he
14 said the Government first thought that the tracks came
15 together in the oil deal and the Drew Fairchild case, but
16 they did not.

17 Q. Did he drop the charges?

18 A. No, sir, he didn't.

19 Q. Let's get back to my question now, which is: You have
20 said in your first affidavit on Page 2, Paragraph 4, that the
21 issue was dropping the gratuity count only if it was shown
22 that there was no connection between the prosecution of Drew
23 Fairchild on drug charges and Judge Nixon's investment in the
24 oil and gas properties; is that right?

25 A. Yes, sir.

1 Q. Now, you wanted to get it down real -- very carefully,
2 verbatim word for word on Exhibit 17 when you wrote it down
3 at the time, didn't you? That's what you said, isn't it?

4 A. Yes, sir. I had to go in and tell Mr. Fairchild when
5 the meeting was.

6 Q. I'm talking about the informal agreement now. You said
7 you wanted to get that down very carefully.

8 A. Yes, sir. I had to go tell him.

9 Q. Word for word.

10 A. And I knew what he was going to ask me.

11 Q. Word for word, Mr. Baltar, on Exhibit 17, it doesn't say
12 what you have in your affidavit, does it?

13 A. Well, this is what I wrote down word for word on the
14 telephone with Mr. Barry Hess, okay? This affidavit, as I
15 explained to you, was made late one afternoon when I was
16 pretty sick with sinus infection. And, you know, didn't have
17 but a short period of time with these gentlemen, they were
18 going to Washington, so I didn't write down word for word.

19 Q. Now, so which is right, Exhibit 17 or your declaration?

20 A. Well, this one is verbatim, okay? I was taking this
21 down on the telephone as Mr. Hess was telling me.

22 THE COURT: Exhibit 17 you're talking about?

23 A. Yes, sir. Exhibit 17, excuse me. The other was
24 written, as I told you a minute ago. I would think that the
25 one I wrote down, you know, while talking to Mr. Hess, that

1 it would be more accurate.

2 Q. Now, Mr. Baltar, two more questions about this proffer.

3 I believe you testified on your direct examination that Mr.
4 Fairchild was instructed that he had to get the oil and gas
5 deal after the drug bust so that he could link it to Drew's
6 case; is that right? Is that your testimony that he was
7 instructed by the Government that he had to testify that the
8 oil and gas deal came after the drug bust so it could be
9 linked to Drew's case?

10 A. It had to be after the drug bust and that's what it was
11 for, was to link it to Drew's case.

12 Q. That's not what was charged in Judge Nixon's indictment,
13 was it?

14 A. I don't know. I didn't see his indictment.

15 Q. Let me show you Exhibit A, which is the indictment.

16 MR. STEWART: Objection. This isn't proper
17 impeachment.

18 THE COURT: As my recollection tells me, I don't
19 need Mr. Baltar's. I'll sustain the objection.

20 MR. COLE: Very well, Your Honor.

21 Q. Mr. Baltar, you also testified that from the very first,
22 Wiley Fairchild was told that he had to say that the
23 royalties he sold to Judge Nixon were worth more than what he
24 paid for them; is that right?

25 A. From the very first being when?

1 Q. Well, I'm using your words, Mr. Baltar. You testified
2 on direct that from the very first --

3 A. Yeah. When they began pressing him about the oil and
4 gas royalties.

5 Q. That would be at the proffer?

6 A. Oh, no, sir. This was at the very beginning of the
7 investigation.

8 Q. I see. But I'm -- I believe your testimony was that
9 from the very first the Government was telling Mr. Fairchild
10 that he had to say that the oil and gas royalties were worth
11 more than he sold them to Judge Nixon for?

12 A. They said they were worth more.

13 Q. Did they tell Mr. Fairchild he had to say that?

14 A. Not at the very first. I didn't mean to say that. The
15 Government said they were worth more.

16 Q. But they never told Mr. Fairchild to say they were worth
17 more?

18 A. They did, yes, sir. But it was later on when we were
19 into the proffer and so forth.

20 Q. I see. So at the time of the proffer, they told him
21 this?

22 A. Uh-huh.

23 Q. Is that right?

24 A. Best I can remember.

25 Q. Let's go back to the proffer, Mr. Baltar. Do you have

1 it there in front of you?

2 A. I got everything, I believe.

3 Q. Want to take a look at the proffer?

4 A. What exhibit are you on now?

5 Q. I believe it's Exhibit 12.

6 A. All right, sir.

7 Q. Could you tell me where in the proffer it says that?

8 A. That Mr. Fairchild -- it was in the pre-proffer, excuse
9 me.

10 Q. So it never made it into the proffer?

11 A. No, sir, I don't believe so.

12 Q. Another important point that was not in the proffer.

13 MR. STEWART: Objection, Your Honor.

14 A. It was an informal agreement like the other, sir.

15 Q. And who was there when this informal agreement was made
16 about this, Mr. Baltar?

17 A. Mr. Kennedy, Mr. Weingarten.

18 Q. Mr. Hess?

19 A. No, I don't believe Mr. Hess was.

20 Q. Mr. Gunn?

21 A. Yeah, Mr. Gunn was there.

22 Q. This was all at the proffer pretaping interview?

23 A. Yes, sir, in Mr. Kennedy's office.

24 Q. Let's talk about the various scripts that you came up
25 with. First you told us about Exhibit 19, this one right

1 here.

2 A. All right, sir.

3 Q. Now, that script couldn't contain any information other
4 than some dates that you got out of Mr. Gunn's files; is that
5 right?

6 MR. STEWART: I have to object to the term.
7 Nobody's ever described Exhibit 19 as a script.

8 THE COURT: Well --

9 MR. STEWART: It's misleading.

10 THE COURT: Let me get 19 in front of me, whatever
11 it is.

12 Q. I'll talk to you about a ten-page writing, Mr. Baltar.

13 A. This -- Mr. Cole, is it?

14 Q. Yes, sir.

15 A. Mr. Cole, this first page is just some notes that I had
16 such as on the 16th of November the Clarion-Ledger carried a
17 story about Ed Pittman and some information on subpoenas
18 that I served. Now, if you turn to the second page of this,
19 and I don't know how the first page got attached to it, but
20 anyway, starting at Page No. 1, this is a chronological order
21 of things that happened from 7-23 of 1980 when the plane that
22 came into Hattiesburg was leased. And it goes all the way
23 through 9-6 of '84 when Mr. Wiley was indicted and pled
24 innocent.

25 Q. Where did you get this information from?

1 A. Out of the files in Mr. Gunn's office. He and I went
2 through the files to make a chronological order of everything
3 that had happened.

4 Q. You didn't get it from Mr. Weingarten?

5 A. No, sir.

6 Q. Didn't get it from anybody in the Government?

7 A. No, sir.

8 Q. Let's go to Exhibit 18.

9 A. All right, sir.

10 Q. This is also another chronology; is that right?

11 A. This is taken from the Exhibit 19.

12 Q. When did you write this one, Mr. Baltar?

13 A. This chronology right here?

14 Q. Yes.

15 A. Exhibit 18, I wrote it on the 26th or 27th of October --
16 November, it was. 27th or 28th of November.

17 Q. Right after Mr. Fairchild pled guilty?

18 A. Between the time he pled guilty and the time he was
19 going before the Grand Jury, Mr. Weingarten told me I had to
20 do this.

21 Q. He instructed you that you had to write this script?

22 A. Yes.

23 Q. Did you give this to anybody besides Mr. Fairchild?

24 A. No, sir. No. I may have given Wallace Gunn a copy. I
25 don't know. I may have just put it in the file.

1 Q. And again the dates on here you got out of things from
2 the public record; is that right?

3 A. Out of what, sir?

4 Q. Out of the public record.

5 A. You're on 18?

6 Q. On Exhibit 18. August 4, 1980, airport drug bust.

7 A. I got them from Exhibit 19.

8 THE COURT: All of 18 came off 19?

9 A. Yes, sir.

10 Q. All the dates came from there?

11 A. Yes, sir.

12 Q. And you filled in a few things in the middle?

13 A. Yes, sir. The things Mr. Weingarten told me to fill in.

14 Q. Did you put in everything Mr. Weingarten told you to put
15 in?

16 A. I hope so, yes, sir.

17 Q. Let's take a look at what Mr. Weingarten told you to put
18 in. Go to your affidavit, your second one, on Page 6,
19 Paragraph 12. Now, first of all these dates. Mr. Weingarten
20 never asked you to put those in; is that right?

21 A. The dates on here?

22 Q. Uh-huh.

23 A. No, sir. But it was the only way that I could put the
24 things in order like he wanted them.

25 Q. Now, the big things that he was talking about here were.

1 for example, the value of the oil and gas deal.

2 MR. STEWART: Objection to the characterization.

3 THE COURT: I'll sustain.

4 Q. All right. The points that you saw fit to put in your
5 affidavit, Mr. Baltar, the second affidavit, that Mr.
6 Weingarten wanted you to prepare Wiley with were things like
7 the value of --

8 THE COURT: He said second affidavit. Are you
9 talking about the same thing? The affidavits we prepared for
10 this hearing.

11 MR. COLE: That's correct, Your Honor. The
12 affidavit of August 3rd.

13 THE COURT: That's what you're talking about.

14 MR. COLE: Right.

15 THE COURT: Okay.

16 Q. Paragraph 12 you state that Weingarten talked to me
17 privately and emphasized that Mr. Fairchild should be
18 rehearsed by me so that he would testify before the Grand
19 Jury to the following: First, that Carroll Ingram first
20 approached Mr. Fairchild about the oil and gas investment
21 with Judge Nixon after his son Drew's drug bust in 1980.
22 That's there, isn't it?

23 A. Yes, sir.

24 Q. Second, that the oil and gas interest which he sold
25 Judge Nixon were worth way more than what Judge Nixon paid

1 for them. That's not there, is it?

2 A. Sir, this is a brief that I put there and Mr. Fairchild,
3 you know, he kind of tagged things. And if you just get him
4 started, he could go right through with the things he was
5 going to say. He'd say the same thing over and over.

6 Q. So you didn't put everything in there that Mr.
7 Weingarten told you to; is that what you're saying?

8 A. I put in there everything that was necessary to get
9 across the points, the testimony, and the dates that Mr.
10 Weingarten wanted put in.

11 Q. Well your next paragraph, Mr. Baltar, you say: I
12 prepared a written summary of what Mr. Fairchild would be
13 asked by Mr. Weingarten; and the answers that Mr. Weingarten
14 wanted from Mr. Fairchild. It says that in Paragraph 13,
15 doesn't it?

16 A. Yes, sir.

17 Q. But in Paragraph 12 when you tell us what Mr. Weingarten
18 wanted Mr. Fairchild to say and wanted you to rehearse him,
19 some of those things are missing, aren't they?

20 A. Well, like I say, you only had to get Mr. Fairchild
21 started on something and he knew what to follow up with.

22 Q. So this is inaccurate, your second affidavit; is that
23 what you're saying?

24 A. No, sir. I wouldn't say that, no, sir.

25 Q. It's not?

1 A. No.

2 Q. Because you didn't prepare a written summary of all the
3 questions and answers as you say.

4 A. I prepared everything, you know. This was within a day
5 of when Mr. Weingarten told me what he wanted in there and I
6 prepared it. And he seemed happy with it when Mr. Fairchild
7 testified.

8 Q. That's not my question, Mr. Baltar. My question is
9 purely: Mr. Weingarten asked you to put certain things in
10 and to rehearse Mr. Fairchild. You say you prepared this
11 chronology and those things aren't in there; isn't that
12 right?

13 A. I think everything's covered in there. Mr. Fairchild
14 only had to just get him started and then he knew the rest of
15 the story.

16 Q. Also you said Mr. Weingarten told you that Mr. Fairchild
17 had to be rehearsed on who placed the call; is that right?

18 A. Yes, sir.

19 Q. That's not in that script either, is it?

20 A. Wiley received a call from Judge Nixon and Bud Holmes
21 about 7:20 p.m. between October 12th, 1982, and December
22 23rd, 1982.

23 Q. And that doesn't say who placed it, does it? Just says
24 who was there talking.

25 A. My copy says received a call from Judge Nixon.

1 Q. And Bud Holmes.

2 A. Yes, sir.

3 Q. Doesn't say who placed the call.

4 MR. STEWART: Objection. He's arguing.

5 THE COURT: Sustained.

6 Q. Now let's go to the script you prepared for Mr.
7 Fairchild for trial. You said there was more than one
8 meeting for trial preparation for Mr. Fairchild.

9 A. Yes, sir.

10 Q. And when were those other meetings?

11 A. I don't really recall. They were kind of superficial.
12 He just wanted to know -- make sure everything was all right.

13 Q. So it wasn't --

14 A. Do you have a copy of those?

15 Q. Yes.

16 THE COURT: Is that Exhibit 1?

17 A. Yes, sir. Exhibit 1. These are the minutes that I took
18 or the questions that I took from Mr. Weingarten's pad.

19 Q. So there was only one substantive meeting; is that
20 right?

21 A. Yes, sir. I would call that substantive, yes, sir. The
22 only one.

23 Q. So when you say there were two meetings, when you said
24 that on direct examination, the other meeting you referred to
25 wasn't really an important meeting?

1 A. Just to make sure that everything was going along.

2 Q. And when did that take place?

3 A. Between then and the trial.

4 Q. Between this meeting and the trial?

5 A. Yes, sir.

6 Q. Now you're describing the same incidents in both of your
7 affidavits; is that right?

8 A. What?

9 Q. Both of your affidavits discuss how this piece of paper
10 came to be made and I'm just asking you, you're talking about
11 the same meeting in both affidavits; is that right?

12 MR. STEWART: Objection. The witness is obviously
13 confused. If he could refer to a specific paragraph.

14 Q. Paragraph 11 in your first affidavit and Paragraph 17 in
15 your second affidavit. Those refer to the same meetings; is
16 that right?

17 A. Yes, sir.

18 Q. Looks like you got the dates confused a little bit on
19 the two of them; is that right?

20 A. Could have.

21 Q. On the first one you say it was the Saturday or Sunday
22 morning during trial.

23 A. No, it was before the trial.

24 Q. So you got it right in the second one. You were wrong
25 in the first one; is that right?

1 A. Well, I don't think I said during the trial. I said --
2 I just missed that. It should have been before the trial.

3 Q. Okay.

4 A. Okay.

5 Q. Now, you said that when Mr. Weingarten came over Don
6 Lawless wasn't there?

7 A. On that Saturday morning?

8 Q. Uh-huh.

9 A. No, sir. He sure wasn't. I went and picked him up. He
10 could have ridden with Mr. Lawless if --

11 Q. And at this meeting Mr. Weingarten wanted to review the
12 points that he wanted Mr. Fairchild to cover in his
13 testimony; is that right?

14 A. Yes, sir.

15 Q. And that included those that he had previously had me
16 rehearse, meaning you, with Mr. Fairchild prior to his Grand
17 Jury; is that right?

18 A. Yes.

19 Q. So that should be the same things, right? Same points?

20 A. No, sir. But some of those were to be included. They
21 were included.

22 Q. So anything that he was testifying to in the Grand Jury
23 was to be included in his testimony at trial?

24 A. I don't know that.

25 MR. STEWART: Objection. That's mischaracterizing.

1 THE COURT: Overrule.

2 A. I don't know that, sir. Whatever he did, I copied them
3 down.

4 Q. Mr. Baltar, I'm asking you what you meant here in your
5 affidavit.

6 A. Okay.

7 Q. Your statement is: Weingarten reviewed the points he
8 wanted Mr. Fairchild to --

9 A. Which one are you on, sir?

10 Q. The second affidavit. The one you say is more
11 accurate.

12 A. Okay.

13 Q. Weingarten reviewed the points he wanted Mr. Fairchild
14 to cover in his testimony which included those that he had
15 previously had me rehearse with Mr. Fairchild prior to his
16 Grand Jury; is that right?

17 A. Where are you located?

18 Q. Paragraph 17.

19 A. Okay.

20 Q. The fifth line down is where it starts.

21 A. Mr. Weingarten would write the specific question on his
22 pad. We would then discuss --

23 Q. Let's go point by point at a time, Mr. Baltar.

24 A. I'm trying to find where you're located, sir.

25 Q. If I may point it out to you, sir. Maybe that will be

1 helpful.

2 A. Yeah. That will help.

3 Q. Starting right there.

4 A. Okay. You just started in the middle of a sentence,
5 that's why I couldn't get -- couldn't catch up with you.

6 Q. It was during this meeting that the three of us -- with
7 the three of us that Mr. Weingarten reviewed the points he
8 wanted Mr. Fairchild to cover; is that right?

9 A. Yes, sir.

10 Q. And those points included the ones he had previously had
11 me rehearse Mr. Fairchild with.

12 A. Prior to his Grand Jury testimony, yes, sir.

13 Q. So we go back to Page 6, Paragraph 12, where you
14 carefully listed the points that would be covered in the
15 Grand Jury; is that right? On that page we have Mr.
16 Weingarten -- right in the middle -- Mr. Weingarten talked to
17 me privately and emphasized that Mr. Fairchild should be
18 rehearsed by me so he would testify to the following.

19 A. Yes.

20 Q. So it includes these points; is that right?

21 A. Yes, sir.

22 Q. Okay. The first point, number one, the Ingram approach
23 was after Drew's bust in August of '80. That's the first
24 point.

25 A. Okay.

1 Q. Do you see that?

2 A. Yes, sir.

3 Q. Show me where that is on the script, Mr. Baltar.

4 A. That's probably one of those -- you see, we were
5 changing Mr. Fairchild's testimony and he --

6 Q. Could you just answer my question first, Mr. Baltar?

7 MR. STEWART: Objection.

8 THE COURT: Wait a minute. Answer the question,
9 then you can explain it. Is it on the script?

10 A. No, sir, I don't see it on the script.

11 THE COURT: Tell us why it's not on there.

12 A. Yes, sir. As I explained to the gentlemen earlier that
13 in reviewing Mr. Fairchild before writing it down, there were
14 certain things that he could not get comfortable with. And
15 he would get confused. And so we reduced it to just -- or
16 Mr. Weingarten reduced it to just these questions.

17 Q. That's not what you say here.

18 A. Well, you know, are you talking about on this
19 affidavit?

20 Q. On your affidavit, uh-huh.

21 A. Well, that was brought up. Mr. Weingarten told me that
22 was one of the points that he wanted, all right?

23 Q. It's not on the script, is it?

24 MR. STEWART: Objection, Your Honor. I'm
25 confused. He keeps saying this, it's not here, it's not

1 there.

2 THE COURT: Overrule. Go ahead.

3 A. I picked up Mr. Weingarten over at the Howard Johnson.
4 He was telling me what all he wanted to do. We sat there and
5 batted back and forth and back and forth and back and forth.
6 If Mr. Fairchild was not comfortable with a question, he
7 would shift until we got questions that were comfortable with
8 Mr. Fairchild to answer and he wrote those down and then he
9 wasn't going to ask those questions that were not
10 comfortable.

11 THE COURT: What do you mean comfortable? Do you
12 mean Fairchild would say well, I can't say that, it's not
13 true, and Weingarten would say, you say it or else? Do you
14 mean comfortable as to he couldn't remember?

15 A. Judge, he kind of talks in paraphrases and he remembers,
16 you know, phrases. And he would get confused.

17 THE COURT: You mean when you say he wasn't
18 comfortable, he was confused?

19 A. Yes, sir, he was confused because it wasn't what he had
20 been saying.

21 Q. Now, when Mr. Weingarten and Mr. Fairchild and you were
22 talking and Mr. Fairchild would say he was uncomfortable with
23 an area, then Mr. Weingarten would say okay, we won't ask you
24 about that; isn't that right?

25 A. Yes, sir.

1 Q. So are you telling me that the Carroll Ingram approach
2 question, the date of that, was a question Mr. Fairchild was
3 uncomfortable with?

4 A. Possibly the way he was asking it, yes, sir.

5 Q. He had testified to it in the Grand Jury, hadn't he?

6 A. Uh-huh.

7 Q. He testified to it at trial, didn't he?

8 A. Yes, sir.

9 Q. But he always testified to it that it was before the
10 son's drug bust?

11 A. Mr. Weingarten wanted him to say it was after the drug
12 bust.

13 Q. In the Grand Jury he testified before?

14 A. Yes, sir. But I had two days.

15 Q. In the November Grand Jury?

16 A. I had two days to brief him on it and it was right here.

17 Q. In the November Grand Jury, Mr. Baltar?

18 A. Yes, sir. That's what it was.

19 Q. And he didn't testify to that? He testified in the
20 November Grand Jury that it happened after the drug bust; is
21 that right?

22 A. I don't remember --

23 MR. STEWART: Objection, Your Honor.

24 A. -- his testimony but here's where I had him to say that.

25 Q. Okay.

- 1 A. And I believe he was supposed to say that. Whether he
2 actually did or not, I don't know.
- 3 Q. And he said it at trial, too, didn't he?
- 4 A. About the drug bust?
- 5 Q. Uh-huh.
- 6 A. He may have, sir, but if it wasn't on these questions --
7 you can't just get Mr. Fairchild to say one thing.
- 8 Q. He'll say whatever he thinks he wants to say; is that
9 right?
- 10 A. Pops in his head, yes, sir.
- 11 Q. He also said that included in these -- the oil interests
12 were more than what Mr. Nixon had paid. See that again on
13 Paragraph 12? These are included in the things that you had
14 previously rehearsed Mr. Fairchild on.
- 15 A. Yes, sir.
- 16 Q. Show me where that is in the script, Mr. Baltar. If you
17 want me to save you some time, sir, it's not there.
- 18 A. I just want to read this, if you don't mind.
- 19 Q. Please. By all means.
- 20 A. No, sir, it's not. But there are a lot of things we sat
21 there and discussed before these questions were narrowed down
22 to what he was comfortable with and, you know.
- 23 Q. So these questions are only what he was comfortable
24 with?
- 25 A. At the time we sat down with him, yes, sir.

1 Q. He testified about the value at the trial, didn't he?

2 A. May have.

3 Q. You were there, weren't you?

4 A. Yes, sir. But I heard Mr. Fairchild testify two or
5 three different ways a lot of times.

6 Q. Now, you also say that Mr. Fairchild was told to say
7 that he remembers the date of the call because he was mad at
8 Bud for not passing the case to files as he had promised.

9 A. Yes, sir.

10 Q. Mr. Fairchild was instructed to say that; is that
11 right? Is that what you're telling us? I'm talking about at
12 the session to prep Mr. Fairchild for trial. That's all I'm
13 asking you now.

14 A. All right, sir.

15 Q. Perhaps I can show you in your second affidavit where
16 you say that. Page 9. It's not in the proffer, Mr. Baltar.

17 A. All right, sir. Mr. Kennedy said you're apparently
18 angry about this --

19 Q. Mr. Baltar?

20 A. Just made you real angry --

21 MR. COLE: Your Honor, could you instruct the
22 witness to answer my question, please?

23 THE COURT: Are we on Page 9 of the second
24 affidavit?

25 MR. COLE: Yes.

1 THE COURT: Answer the question, Mr. Baltar.

2 Q. Mr. Baltar, you're saying and trying to tell us today
3 that Mr. Weingarten instructed Mr. Fairchild at the meeting
4 before trial to say that he remembered he was mad at Bud
5 because the case had not been passed to files as Bud had
6 promised and that's how he could date the phone call from
7 Judge Nixon. Isn't that what you say in your affidavit here?

8 A. Where are you located in the affidavit, sir?

9 Q. Let me point it out to you, sir.

10 A. Okay.

11 Q. Start right there.

12 A. Uh-huh.

13 Q. Do you see that?

14 A. Yes, sir.

15 Q. Isn't that what you say in your affidavit?

16 A. Yes, sir.

17 Q. Was Mr. Fairchild comfortable with that?

18 A. I don't remember whether he was or not, but I think he
19 probably would have been. We talked to him about it a number
20 of times.

21 Q. Take a look at the script again, Mr. Baltar.

22 A. Okay.

23 Q. Show me where that is on the script. No, the script for
24 trial, sir. Exhibit 1. Exhibit 1.

25 A. Well --

1 Q. It's not there, is it, sir?

2 A. Yes, sir, it is. Yes, sir.

3 Q. Show me where it is.

4 A. I was angry over an accumulation of delays and people
5 trying to blackmail me. It's in the third paragraph down
6 right under Bob Royals. You see, he connects this with Bob
7 Royals coming in and demanding that money.

8 Q. This isn't saying in the script that Bud had not passed
9 the case to files as he promised, does it?

10 MR. STEWART: Objection.

11 THE COURT: I'll sustain the objection. You don't
12 refer to anything about Bud Holmes in this, him being angry
13 at Holmes. This is a sole reference to anger that he made.
14 Royals called about money and he made me real mad and I was
15 angered over an accumulation of delays and people trying to
16 blackmail me. You're saying that refers to Bud Holmes?

17 A. Yes, sir, it does, Your Honor. Bob Royals, Mr.
18 Fairchild felt, was sent by Bill Porter and Bud Holmes to
19 extract money from him.

20 Q. Let's move on, Mr. Baltar. The next thing you say is
21 that Mr. Fairchild was instructed that when asked about the
22 Jarvis tape recorded conversation he was to say that he was
23 not being honest with Jarvis at that time and he was telling
24 Jarvis just what he wanted him to hear.

25 A. Yes, sir.

- 1 Q. Is that right? Mr. Fairchild comfortable with that?
- 2 A. Probably so, sir.
- 3 Q. Find it for me on the script, Mr. Baltar.
- 4 A. All right, sir. Well, we evidently left that off the
- 5 script. I only copied down what Mr. Weingarten had there.
- 6 Q. Mr. Baltar, you were at trial, weren't you?
- 7 A. Yes, sir.
- 8 Q. Did you hear Wiley Fairchild on a number of occasions
- 9 state that things he told Skip Jarvis were true?
- 10 A. Yes, sir, I heard him tell him both ways. Mr. Cole,
- 11 you've got to remember this was 22 months and I heard this
- 12 everyday, every single day, seven days a week.
- 13 MR. COLE: I have no further questions for this
- 14 witness, Your Honor.
- 15 THE COURT: Mr. Stewart.
- 16 MR. STEWART: Thank you, Your Honor.
- 17 RE-DIRECT EXAMINATION BY MR. STEWART:
- 18 Q. Mr. Baltar, I have only a few questions here. I believe
- 19 you just referred to something I did want to ask you about.
- 20 This script here, Exhibit 1, consists simply of what you
- 21 copied off what Mr. Weingarten had written down, didn't you?
- 22 A. Yes, I did.
- 23 Q. So if at some other time Mr. Weingarten determined he
- 24 wanted to ask a question or if he determined that he didn't
- 25 need to write it down for whatever reason you had, you did

1 not write it down?

2 A. That's right, sir.

3 MR. COLE: Objection. Leading, Your Honor.

4 MR. STEWART: This is redirect, Your Honor.

5 THE COURT: I'll overrule. It's redirect. Ask
6 questions without leading.

7 MR. STEWART: I'm sorry?

8 THE COURT: Let's continue on but do it without
9 leading questions.

10 MR. STEWART: Thank you.

11 Q. Now, you were also asked about matters that apparently
12 were not included on the script that still were the subject
13 of discussion. If Mr. Fairchild were able to retain in his
14 mind and to give certain testimony, did you find it necessary
15 to include it in the script?

16 MR. COLE: Objection, Your Honor. We are again
17 leading.

18 A. No, sir.

19 MR. COLE: This is Mr. Stewart testifying.

20 THE COURT: Let me say one thing. Since I'm the
21 jury and under these circumstances I factor all those things
22 into the answers that I hear, so let's try to avoid leading
23 questions, Mr. Stewart.

24 MR. STEWART: Yes, sir.

25 Q. What did you put on the script? What was your criteria

- 1 for what you would include on both scripts?
- 2 A. Exhibit No. 17
- 3 Q. Let's start with Exhibit 1.
- 4 A. All right, sir. Mr. Fairchild said get that down, I
5 want exactly what he's got on there and I want to get it
6 typed so I can study it.
- 7 Q. Did you exercise any judgment?
- 8 A. No, sir.
- 9 Q. In what you wrote there?
- 10 A. No, sir. I copied exactly what he had.
- 11 Q. All right. Let's look at Exhibit 18, that script.
- 12 A. All right, sir.
- 13 Q. What criteria did you apply in order to determine what
14 would go on that?
- 15 A. Mr. Weingarten told me the answers he needed in here and
16 I took the dates and I reduced from the large chronology down
17 to the small chronology so that he could study these items
18 and just to get them in between dates and so forth.
- 19 Q. Did Mr. Fairchild have any problem remembering dates?
- 20 A. Yes, sir.
- 21 Q. Does he?
- 22 A. Yes, sir.
- 23 Q. Is that --
- 24 A. That's why I say between these dates, yes, sir.
- 25 Q. How would you compare his ability to remember dates with

1 his ability to remember other facts?

2 A. Very bad, sir. Very bad. Once he could get a little
3 story going, he could remember it pretty well.

4 Q. I wanted to ask you, and I may jump around here just a
5 little bit, about Exhibit 12, I believe it is, which is the
6 transcript of the proffer.

7 A. All right, sir.

8 Q. Mr. Cole asked you some questions as to whether it was
9 mentioned on there as to when Drew Fairchild's case had been
10 passed to the files with respect to -- excuse me. I lost my
11 train of thought.

12 The question related to whether it was in that
13 transcript whether Drew Fairchild's case passing to the files
14 was related to the phone call from Bud Holmes' farm. And I
15 wanted to direct your attention to the bottom of Page 8. The
16 large paragraph headed Fairchild about ten lines long.

17 A. All right, sir.

18 Q. I ask you to review that.

19 A. All right, sir.

20 Q. And does that refresh your recollection as to whether in
21 that proffer there was a reference with respect to the phone
22 call from the farm comparing it to when Drew's case was
23 passed to the files?

24 A. It says: I think it was pretty close to the time it was
25 passed to the files.

- 1 Q. All right. I want to ask you about the process by which
2 the first affidavit that's been referred to was prepared.
3 You've described the circumstances. Did you have an
4 opportunity at that time to view all the documents that we've
5 been looking at here today?
- 6 A. No, sir. I was in Jackson and I was called to
7 Hattiesburg late that afternoon to get Mr. Fairchild and Mr.
8 Gunn in their office -- in Mr. Gunn's office concerning a
9 bankruptcy case and quarter to 5:00 Mr. Fairchild looked at
10 me and said you've got somebody you've got to get with at
11 5:00 o'clock and it was quarter until. And so we ended the
12 discussion there and went and had a meeting and I didn't have
13 any files, didn't know what I was going to say.
- 14 Q. And do you recall about how long you spent together?
- 15 A. About 30, 45 minutes maybe. Something.
- 16 Q. And that conversation was the basis for the first
17 affidavit; is that right?
- 18 A. Yes, sir.
- 19 Q. Now, the second affidavit or the first one's a
20 declaration actually. The second affidavit, which is an
21 affidavit, does that refer -- do you recall how long you
22 spent working on that one?
- 23 A. Yes, sir. Several hours on this one.
- 24 Q. All right. And, again, did you have an opportunity to
25 review the materials we've been able to look at here today,

1 the informal agreement memorandum or the script from the
2 Grand Jury testimony?

3 A. No, sir. I just saw those Saturday.

4 Q. So you were just going on your best recollection at that
5 time?

6 A. Yes, sir.

7 Q. Let's look at Exhibit 17 just for a second. That's the
8 informal agreement memorandum.

9 A. All right.

10 Q. Is it your -- having reviewed Exhibit 17 now, do you
11 feel that your initial recollection was either true or false
12 that there had been an informal agreement with respect to the
13 plea agreement that Mr. Fairchild formally signed?

14 A. Yes, sir.

15 Q. What was to be the payoff or the possible relief to Mr.
16 Fairchild if certain events were to happen? What was he to
17 get under this formal agreement?

18 A. Well, he was to get this count dismissed and get Drew
19 some help.

20 Q. All right. I wanted to just ask one question about when
21 you went to the -- spoke with the FBI before the November 1
22 proffer or to Mr. Weingarten, whichever it was. When you
23 made that approach, did you say to the FBI or to Mr.
24 Weingarten, whomever you spoke with, did you make any
25 statement with respect to Mr. Fairchild's guilt? Did you

1 indicate that you thought he was guilty?

2 A. No, sir.

3 Q. In your judgment, was that something you would want to
4 say when you were beginning plea negotiations that the man
5 you represented is guilty?

6 A. No, sir.

7 Q. Why is that?

8 A. Why what?

9 Q. Why wouldn't you want to say that the man's lawyers told
10 him he was guilty?

11 A. Oh, well, now, the lawyers told him he was guilty but he
12 didn't think he was guilty.

13 Q. Why wouldn't you want to say that to the Government?
14 Hey, Mr. Fairchild's lawyers told him he's guilty.

15 A. Well --

16 MR. COLE: Your Honor, I don't know where this is
17 going.

18 THE COURT: I'll sustain the objection.

19 Q. Staying with this period before the proffer, did Mr.
20 Fairchild -- at this point can you recall any other
21 allegations Mr. Fairchild made which were different from the
22 allegations you've been able to describe here today, Preacher
23 Shows, the murder -- death of Bill Porter, and the phone
24 call?

25 A. No, sir, not right at this minute.

1 Q. But you do recall that there were others?

2 A. Yes, sir, I know there were others.

3 Q. And were those allegations ever mentioned to the
4 Government to your knowledge?

5 A. No, sir.

6 Q. And why was that?

7 A. Well, they were just ideas Mr. Fairchild had, you know,
8 no substance.

9 MR. STEWART: Your indulgence, Your Honor.

10 Q. Mr. Baltar, in the course of this investigation in
11 earlier 1984 during the time of this proffer, did Mr.
12 Fairchild ever receive any advice that he should not
13 cooperate with the Government from his attorneys?

14 A. In when, sir?

15 Q. Well, let's take the time when he appeared at the Grand
16 Jury. Was he offered immunity, for example?

17 A. He was never offered immunity. Well, he was offered
18 immunity at first but never afterwards.

19 Q. And what was his lawyer's advice at that point when he
20 was offered immunity?

21 A. At the very first?

22 Q. Yes.

23 A. That he didn't need it. According to him, he said -- I
24 wasn't there -- but he said his lawyers told him he didn't
25 need immunity and he didn't think he needed it because he

1 hadn't done anything wrong.

2 Q. And was he advised at that time to cooperate with the
3 Government or not to cooperate with the Government?

4 A. Well, he cooperated. I don't know, sir, I wasn't
5 there. But he told me he had them go in and get all of his
6 files in the Nixon thing. There was no problem with it.

7 Q. Do you know whether there was a time in which he
8 declined to submit to further interview by the FBI?

9 A. No, sir, I don't. To my knowledge he cooperated fully
10 the whole time.

11 MR. STEWART: Thank you, Your Honor. Thank you,
12 Mr. Baltar.

13 MR. COLE: Very briefly, Your Honor.

14 RE-CROSS-EXAMINATION BY MR. COLE:

15 Q. Mr. Baltar, you said that the informal agreement was
16 made -- first of all, just one question on that. This
17 informal agreement was only if evidence showed up that said
18 Mr. Fairchild wasn't guilty of anything, right?

19 A. If his cooperation provides more than he anticipates or
20 if the investigation goes forward and proves that Wiley is a
21 victim.

22 Q. Okay. And what was going to happen from this is two
23 things. The case against him would be dismissed, and there
24 would be some help with Drew Fairchild's case; is that right?

25 A. Yes, sir.

1 Q. That doesn't appear on Exhibit 17, does it?

2 A. It says he will dismiss the count.

3 Q. Where does it say anything about Drew?

4 A. It doesn't say anything about that on Drew.

5 Q. This is the one you wrote verbatim; is that right?

6 A. Well, I wrote it from the telephone, yes, sir.

7 Q. Verbatim from what Mr. Hess told you.

8 A. I'm sure I did.

9 THE COURT: Mr. Baltar, did you have independent
10 legal advice before you came here today to testify?

11 A. No, sir.

12 THE COURT: You have in front of you Exhibits 1,
13 17, 18, and 19? One is the so-called script; 17, 18, and 19
14 are the notes?

15 A. Yes, sir. I've got 19, yes, sir.

16 THE COURT: These were all prepared by you as you
17 described it; is that right?

18 A. Yes, sir. All three of them.

19 THE COURT: Did you write down any facts first on
20 that script which you deemed to be false?

21 A. On which exhibit now?

22 THE COURT: On the script, No. 1.

23 A. All right, sir. I wrote down verbatim everything that
24 Mr. Weingarten had.

25 THE COURT: My question is: Did you write down any

1 fact that you deemed to be wrong?

2 A. No, sir, I did not know what was right and what was
3 wrong.

4 THE COURT: What about Exhibits 17, 18, and 19? Is
5 your answer the same? Take your time.

6 A. Yes, sir. I don't know of anything wrong.

7 THE COURT: Did anybody make any suggestions to
8 you, including Mr. Weingarten or any other Government
9 representative, a suggestion or representation or a direction
10 or instruction to you to write down on any of these papers
11 anything that was false, erroneous, or a lie, or wrong?

12 A. No, sir.

13 THE COURT: Anything else, Mr. Stewart?

14 MR. STEWART: Just in response to that last
15 question.

16 RE-DIRECT EXAMINATION BY MR. STEWART:

17 Q. Was your answer that you did not write down anything
18 that you knew was wrong?

19 A. Right, sir. Yeah.

20 THE COURT: I don't know that that's his answer,
21 but I guess we could, you know, surmise that that's what
22 we're talking about. Anything further?

23 RECROSS-EXAMINATION BY MR. COLE:

24 Q. Did you care whether it was right or wrong when you
25 wrote it down?

1 A. Yes, sir.

2 Q. Would you have written down anything that you thought
3 was wrong?

4 A. No, sir.

5 MR. COLE: Thank you.

6 THE COURT: You may step down, Mr. Baltar.

7 MR. STEWART: We would call Wiley Fairchild.

8 WILEY FAIRCHILD, having first been duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION BY MR. STEWART:

11 Q. Could you state your name, please?

12 A. Wiley Fairchild.

13 Q. And where do you live?

14 A. Hattiesburg, Mississippi.

15 Q. And what's your business?

16 A. I'm in contracting and oil exploration, and some other
17 businesses, apartments.

18 Q. You run your own company?

19 A. Yes.

20 Q. Mr. Fairchild, the hour's late and I'm going to skip
21 right into the questioning I want to get to.

22 THE COURT: So the record is clear, needless to
23 say, we talked informally about this with both counsel and
24 I'm charged with the background and other things involved
25 concerning Mr. Fairchild and the whole case.

1 MR. STEWART: Thank you.

2 Q. Mr. Fairchild, do you recall being called to testify
3 before the Hattiesburg Grand Jury in July of 1984?

4 A. Yeah.

5 Q. Did you attempt to give truthful testimony during that
6 Grand Jury appearance?

7 A. Repeat the question.

8 Q. I'm probably talking too fast. Did you attempt to give
9 truthful testimony during that Grand Jury appearance?

10 A. Yes.

11 Q. All right. Were you indicted on Federal charges after
12 that?

13 A. Yes.

14 Q. Do you recall how quickly you were indicted after your
15 testimony?

16 A. No, I don't recall.

17 Q. All right. Do you recall what the charges were?

18 A. Yes. Perjury and giving an illegal gratuity.

19 Q. All right. Now, following the indictment, were plea
20 negotiations or attempts to settle the charges in some way
21 initiated by you?

22 A. Yes.

23 Q. And do you recall exactly when that was?

24 A. No.

25 Q. All right. Why were such negotiations initiated?

1 A. Why what?

2 Q. Why did you instruct the beginning of plea negotiations?

3 A. Well, I didn't figure I had done anything illegal and I
4 thought I'd get off without any, you know, get off without
5 any jail sentence.

6 Q. Now, who were your attorneys in connection with this
7 criminal case?

8 A. Wallace Gunn is one of my attorneys. He's not a
9 criminal lawyer. And then Karl Kepper, and then Arendall,
10 and then finally Barry Hess.

11 Q. All right. Now, who was John Balter?

12 A. He was working for me.

13 Q. What were his duties?

14 A. Well, he was a PR man and a lobbyist.

15 Q. Did you rely upon him while he worked for the Fairchild
16 Company?

17 A. Do what?

18 Q. Did you rely upon him while he worked for the Fairchild
19 Company?

20 A. Very much.

21 Q. Did he become involved in the effort to try to resolve
22 the Federal charges against you?

23 A. Yes.

24 Q. Did you ask him to do so?

25 A. Yes.

1 Q. Why did you ask him to become involved?

2 A. Well, he's just -- he just impressed me that he could
3 get things done, and he knew a lot of people.

4 Q. When the plea negotiations were initiated, what
5 response, if any, do you recall the Government making?

6 A. Well, there's one thing Mr. Weingarten said, if I would
7 -- if my testimony suited him -- now these are not the exact
8 words, I can't remember the exact words. But if my testimony
9 -- if he is satisfied with it, he would -- that if he found
10 out there wasn't no connection between the oil and gas deeds
11 and my son, Drew Fairchild's case, he would drop the gratuity
12 charges, and he'd drop the perjury charges right then, you
13 know, if we got together.

14 Q. All right. I think you may be referring to the end of
15 the plea negotiations. My question related to when they
16 first began. When they first began, the discussions with the
17 Government, do you recall what the Government's position was
18 with respect to how you might be able to resolve the case?

19 A. Well, I don't get exactly what you're driving at now.

20 THE COURT: You can use leading questions, Mr.
21 Stewart.

22 MR. STEWART: Thank you.

23 Q. Did you learn whether or not the Government was looking
24 for certain testimony from you?

25 A. Yes.

1 Q. Was there any reference to the term "smoking gun" in the
2 plea negotiations?

3 A. Oh, yes.

4 Q. When did you first -- what did you understand that term
5 to refer to?

6 A. Well, something real damaging to Judge Nixon.

7 Q. All right. And how did you first learn that the term
8 had been used? Who was using it?

9 A. Mr. Weingarten.

10 Q. And did you hear him say it?

11 A. Yes.

12 Q. And do you recall where you were when you heard him say
13 it?

14 A. We was in the Federal Building up, I think, on the 12th
15 Floor.

16 Q. And to the best you can recall, what did he say to you?

17 A. Well, I told him about the telephone call.

18 Q. By that do you mean the phone call from Bud Holmes' farm
19 to you?

20 A. Bud Holmes. And he says that won't get it, or words to
21 that effect, I got to have a "smoking gun".

22 Q. All right. Now, do you recall whether this was the
23 occasion when you made a tape recorded proffer to the
24 Government as to your possible testimony?

25 A. Repeat the question.

1 THE COURT: Explain that to him.

2 Q. Do you know the term proffer? It's when a potential
3 witness attempts -- tells the Government what he knows to try
4 to make a deal?

5 A. Yeah.

6 Q. All right. Do you recall that you made a proffer in the
7 course of your case?

8 A. Yeah.

9 Q. All right. And where did you make that proffer?

10 A. It was in the Federal Building.

11 Q. And was it tape recorded?

12 A. Yes.

13 Q. All right. Now, at that meeting did your attorney,
14 Wallace Gunn, attempt to tape record the meeting?

15 A. Did Wallace Gunn what?

16 Q. Did Wallace Gunn ever attempt to tape record a meeting
17 with the Government?

18 A. Yes.

19 Q. Do you recall what -- did the Government -- strike
20 that.

21 A. He had his tape recorder going and Weingarten said let's
22 turn that thing off, we're going to have to give that to the
23 other side, or words to that effect.

24 Q. Do you recall when that was?

25 A. Well, no, I don't recall when it was. I'm not -- I

1 can't remember them dates.

2 Q. All right. Let me come back to the time of the
3 proffer. You made this proffer in the Federal Building here
4 in Jackson; is that correct?

5 A. Yeah.

6 Q. Now, did you hear Mr. Weingarten at that time make the
7 statement you've described concerning the "smoking gun"?

8 A. Well, he said it several times. Whether he just would
9 -- precisely each time he said it, I just can't recall, but I
10 know it was said several times.

11 Q. Did you attempt to provide a "smoking gun" to Mr.
12 Weingarten?

13 A. Yes.

14 Q. What did you do to try to provide that?

15 A. Well, I lay awake at night trying to think about
16 anything that would come up. And the only thing I could
17 think about was the telephone call. And we discussed it and
18 we was talking and --

19 Q. When you say we, who do you mean?

20 A. Me and John Baltar and Wallace Gunn.

21 Q. All right. Now, where did you have this conversation
22 with them?

23 A. Well, we were up there and it was on the 12th Floor and
24 talking to Weingarten and when he said we got to have -- he
25 said I got to have -- I told about the telephone conversation

1 and he said words to the effect that won't get it. We -- I
2 got to have a "smoking gun".

3 Then Baltar said something to Wallace Gunn and they
4 mumbled something and I mumbled something and I said yeah.
5 And we got in the car and went back to Hattiesburg. And I
6 said we just got to come up with something. And we got down
7 there to Hattiesburg and I said well, y'all go back up there
8 tomorrow, be up there at 8:00 o'clock. And we just got to
9 come up with something or another. And I couldn't sleep
10 that --

11 Q. Mr. Fairchild, let me break in. Perhaps if I could ask
12 a question maybe we'll focus a little here. Do you recall at
13 the proffer, at the meeting on the proffer, that you did
14 repeat your recollection concerning the phone call from Bud
15 Holmes' farm?

16 A. Yes.

17 Q. And the meeting with Judge Nixon beforehand; is that
18 right?

19 A. Yeah.

20 Q. Now, do you recall whether after you described that to
21 Mr. Weingarten at that meeting he said anything further to
22 you with respect to the substance of what you described
23 concerning the phone call about those facts?

24 A. No, I don't remember. He could have said something.

25 Q. Don't let me cut you off. Go ahead.

1 A. He could have, but I don't remember.

2 MR. COLE: Objection, Your Honor. I think we
3 should only be within recollection.

4 THE COURT: Sustained.

5 Q. I would like to explore your recollection for a minute.
6 Do you recall whether or not there was any conversation at
7 that meeting concerning the date when Carroll Ingram first
8 approached you about an investment with Judge Nixon?

9 A. Yes. There was a discussion about it.

10 Q. All right. And did it concern when that approach from
11 Carroll Ingram had occurred?

12 A. To the best of my recollection, yes.

13 Q. All right. Now, had you -- when did that approach from
14 Carroll Ingram occur?

15 A. The first time?

16 Q. Yes, sir.

17 A. In late '79 or early '80.

18 Q. Now, did Mr. Weingarten -- did you tell that to Mr.
19 Weingarten at the proffer?

20 A. To the best of my recollection, yes.

21 Q. Did he make any statement to you concerning that?
22 Whether that fact was true or false?

23 A. The best I remembered, he said that wasn't the way it
24 happened.

25 Q. Okay. Do you recall whether he made any statement as to

1 when that approach from Carroll Ingram was supposed to have
2 happened?

3 A. He said something to the effect about it's bound to have
4 happened after the drug bust.

5 Q. All right. Did he make any statement to you indicating
6 that you should or should not say that it happened after the
7 drug bust?

8 A. Well, I was depending on John Baltar and John Baltar was
9 making all the notes.

10 Q. Let's try to stay with this for a second. You told them
11 that the approach from Carroll Ingram occurred late 1979 or
12 early 1980.

13 A. Yeah.

14 Q. And he says in response that that doesn't sound right,
15 it must have been after the drug bust. Did he make any
16 statement to you that indicated to you that that was what you
17 should be saying in your proffer?

18 A. Either he did or John Baltar did one.

19 Q. I guess I need to ask you to concentrate for a minute
20 and try to think back.

21 A. Well --

22 THE COURT: Well, if he can't remember, if that's
23 the safest thing to say. If it isn't, say so. We can't wait
24 all day. Take your time and think and then give Mr. Stewart
25 the correct answer.

1 A. It was either Mr. Weingarten said that or John Baltar.
2 Now, John Baltar was the one given an oath before I testified
3 at the Grand Jury and that's why that I did.

4 Q. All right. But let's back up here. We're at the
5 proffer.

6 A. Yeah.

7 Q. The statement is made to you that that's what you should
8 say. That the approach from Carroll Ingram occurred after
9 the drug bust.

10 A. Yes, it was said in the presence there of John Baltar.

11 Q. All right. And did Mr. Weingarten say that?

12 A. To the best of my memory, yeah, it was him.

13 Q. Do you recall whether there was any conversation at that
14 meeting concerning your proffer, this is the proffer meeting
15 in the Federal Building, with respect to the price that you
16 would charge to Judge Nixon for the mineral interest?

17 A. Yes.

18 Q. All right. Did the prosecutor make any statement to you
19 concerning what the price was, whether it was a fair price, a
20 high price, or a low price?

21 A. Yes. He talked about it.

22 Q. What did he say? Mr. Weingarten.

23 A. He said could you have gotten more for that? And I said
24 well, if I had went out and peddled it. I don't sell oil
25 interest. I said yeah, I could have got more. And he said

1 well, that's good, that's what I want to hear you say.

2 Q. Did he make any statement to you that that's what you
3 were going to have to say?

4 A. I don't remember him saying that I would have to say it,
5 but I got the distinct impression that that's what he wanted
6 me to say. That he would take that pleasing.

7 Q. Have you made a profit on those interests that you sold
8 to Judge Nixon?

9 A. Yes.

10 Q. It has been a very good profit, hasn't it?

11 A. It was very good.

12 Q. Now, again staying with the proffer meeting for just a
13 minute, during that conversation, was there any conversation,
14 any exchange on the question whether the phone call from Bud
15 Holmes' farm occurred before or after your son Drew's case
16 was passed to the files in State Court?

17 A. Repeat the question now.

18 Q. All right. We're in the proffer.

19 A. Okay.

20 Q. Was there any conversation about when the phone call
21 from Bud Holmes' farm occurred? And I'm specifically
22 focusing on whether it occurred before Drew's case went to
23 the files or after. Was there conversation about that?

24 A. I don't remember that conversation at the proffer. No,
25 I don't remember that coming up. It very well could have.

1 MR. COLE: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q. Do you have any recollection that Mr. Weingarten stated
4 to you at that time that the phone call from Bud Holmes' farm
5 had to have occurred before the case passed to the files?

6 A. Well, that rings a bell but -- if you said it, I
7 wouldn't deny it. And I think he did but just my memory is
8 just not that good and everything.

9 Q. Mr. Fairchild, I'm only looking for the truthful answers
10 here so -- but I need to ask you something because on Friday
11 I visited you at your office, didn't I?

12 A. Yeah.

13 Q. And we met and there were five or six people present,
14 weren't there?

15 A. Yes.

16 Q. And your lawyer was present, too?

17 A. Yes.

18 Q. And I asked you this question as to whether Mr.
19 Weingarten had made a statement to you and you had to place
20 the call from Bud Holmes' farm before the case passed to the
21 files. And you answered me yes, that's what he told me; do
22 you recall that?

23 A. Yes, sir.

24 Q. Was that true what you told me on Friday?

25 A. Yes, that was true. My mind was clearer last Friday

1 than it is now. I've been --

2 Q. I realize it's late in the day and you've been sitting
3 here all day. Let me just focus on that one more time then.
4 You're in the proffer. Mr. Weingarten -- does he make the
5 statement that you've got to say that the phone call occurred
6 before Drew's case passed to the files?

7 A. I don't think he said them exact words.

8 Q. All right.

9 A. I got the message that that's what I need to do.

10 Q. All right. You understood whatever the -- I can't give
11 you his precise words because I wasn't there. Whatever words
12 he used, that's what he was telling you?

13 A. Yeah.

14 Q. Do you recall during this time frame -- and here I want
15 to go beyond the proffer meeting. During this period when
16 there were negotiations or conversations about a plea deal,
17 did you ever hear that there was some kind of telephone toll
18 record, some kind of document, a toll call, that indicated
19 that that phone call from Bud Holmes' farm had to have
20 occurred before Drew's case passed to the files?

21 A. I heard that discussed about the toll and phone call but
22 it wasn't no long distance call so, you know, it just lost
23 me.

24 Q. All right. Did you ever see such a document?

25 A. No.

1 Q. Did the Government representatives, either FBI agents or
2 prosecutors, make that statement, though, that they did have
3 a document like that?

4 A. Yeah.

5 Q. I need to ask you now to the best of your recollection
6 right now, when did that phone call from Bud Holmes' farm and
7 that meeting with Judge Nixon beforehand, when did that
8 occur? Did it occur before the case was passed to the files
9 or after?

10 A. Well, can I explain?

11 THE COURT: Just a minute, Mr. Fairchild. I don't
12 know how many times this question has been asked of him. You
13 know, there's a beginning and there's an end. And I suspect
14 that we're passed the end on that. He's testified in
15 different ways as far as I can tell on that particular
16 question. If you want to ask him once more and you want to
17 answer it, let's, you know, get on.

18 MR. STEWART: Yes, sir.

19 THE COURT: Go ahead, Mr. Stewart. I interrupted
20 you.

21 Q. Do you remember the question, Mr. Fairchild?

22 A. Yes.

23 Q. Was it before or after the case was passed to the files?

24 A. The best of my recollection -- my brother was in there
25 when me and Judge Nixon was talking, and he says it was made

1 after it was passed to the files.

2 MR. COLE: Objection, Your Honor.

3 THE COURT: I'll sustain.

4 Q. What is your recollection?

5 A. The best of my recollection is it was made after it was
6 passed to the file.

7 Q. You realize that you have testified on other occasions
8 that occurred before the case was passed to the files, the
9 phone call.

10 A. Yeah.

11 Q. All right. Is there any reason why you're stating today
12 that it is after the case was passed to the files?

13 A. Well, because my brother refreshed my memory.

14 Q. Are you comfortable now that that is when it happened?

15 A. Yes.

16 Q. During the plea conversations with the Government, did
17 you have any conversation -- did you ever talk to Reid
18 Weingarten about your son Drew?

19 A. Yes. I had my -- Mr. Baltar, and we all talked about
20 it, yes.

21 Q. All right. What did you tell -- what were you asked --
22 what were you talking to Mr. Weingarten about Drew for?

23 A. I wanted to help him.

24 Q. Did you ask him to help Drew?

25 A. Yes.

1 Q. And what was Mr. Weingarten's response?

2 A. He said he would do what he could.

3 Q. Did you believe Mr. Weingarten when he said he would do
4 what he could to help Drew?

5 A. Yes.

6 Q. Was that statement important to you when you finally
7 agreed to accept the plea bargain?

8 A. Yes.

9 Q. At the time the plea negotiations were going on, you're
10 talking to the Government or John Baltar's talking to the
11 Government, did you ever learn -- and I think you may have
12 referred to it earlier -- but there were circumstances in
13 which Mr. Weingarten said even if you pled guilty he still
14 might drop the charges afterwards?

15 A. The gratuity charge?

16 Q. Yes, the gratuity.

17 A. Yes. He said if he found out there were no connections
18 between the oil and gas deeds and the Drew Fairchild case he
19 would drop them.

20 Q. And how did you learn of that?

21 A. Huh?

22 Q. How did you learn that? Did he tell you that directly?

23 A. Yes, he told me.

24 Q. Where were you when he told you that?

25 A. We was in this Federal Building.

1 Q. Did you believe him when he told you that?

2 A. Yes, I did.

3 Q. Was that important to you, to grant the plea bargain,
4 that you did agree to it?

5 A. Yes, because I had every confidence in the world
6 thinking he'd find out there wasn't nothing, he'd drop the
7 charge.

8 Q. I want to shift now to your Grand Jury appearance after
9 your plea agreement. This is in November. Your second Grand
10 Jury appearance. Prior to your testimony before that Grand
11 Jury, did you review what your testimony was to be with John
12 Baltar?

13 A. Yeah.

14 Q. I want to show you what has been marked as Petitioner's
15 Exhibit 18 and ask you if you can identify it.

16 A. Yeah.

17 Q. That's a xerox of it.

18 A. Yeah.

19 Q. Have you seen that document before?

20 A. Yes.

21 Q. What is it?

22 A. Well, it's something that John Baltar taped from Reid
23 Weingarten to coach me on.

24 Q. Did you study Exhibit 18 before you testified before the
25 Grand Jury?

1 A. I saw it, but I don't remember really studying it. But,
2 yeah, I saw it and I read it.

3 Q. And did you talk to Mr. Baltar about the particular
4 items you were supposed to cover in that testimony?

5 A. Yes.

6 Q. Did you understand that he was telling you what Mr.
7 Weingarten wanted you to cover in that testimony?

8 A. Yes.

9 Q. Did any attorney help you prepare to testify in that
10 Grand Jury, the second one?

11 A. No.

12 Q. Did any attorney accompany you to the Grand Jury when
13 you did give your testimony that second time?

14 A. No.

15 Q. Did Mr. Baltar?

16 A. Yes.

17 Q. Do you recall any occasion on which you attempted to
18 have your sentencing following the guilty plea happen more
19 quickly?

20 A.. No. Other people have said that, but I don't remember
21 me pushing for a sentence.

22 Q. Let me change the question some. Do you have any
23 recollection ever of sending a message to Mr. Weingarten
24 through John Baltar or even telling him yourself that he
25 didn't have to worry about you, you would testify the way he

1 wanted you to testify?

2 A. The way I remember it, Mr. Baltar said Mr. Weingarten's
3 worried about how you're going to testify if we go ahead and
4 get this sentence out of the way. Well, I was expecting to
5 not get no sentence and I says no, I won't change a thing.

6 Q. Let me just try to clarify. Did you ask him to pass
7 that information on to Mr. Weingarten?

8 A. Yeah.

9 Q. And the information was that you would not change any of
10 your testimony from that second Grand Jury appearance?

11 A. Yeah.

12 Q. Is that correct?

13 A. Yeah.

14 Q. Did anybody pass on to you prior to your sentencing what
15 a prosecutor had said that you should say at sentencing, at
16 the hearing?

17 A. Yes.

18 Q. What was that?

19 A. Me and Mr. Baltar and Mr. Gunn were going to New Orleans
20 and about halfway down there -- Mr. Baltar was driving and I
21 was in the back seat and Mr. Gunn was sitting over -- and he
22 says I talked to Mr. Weingarten and he says here's what -- he
23 said if you would say to the Judge -- says I've heard Wiley
24 before the Grand Jury and this will get the job done. And
25 Mr. Gunn told me -- he handed me this paper, wrote down what

1 to say, and I memorized that that night.

2 Q. Did you make that statement at the sentencing hearing?

3 A. Word for word.

4 Q. Why did you do what the prosecutor suggested on that
5 occasion?

6 A. Why did I? Well, I still had faith that I was, you
7 know, that I was going to come clean, I would get a suspended
8 sentence or something. And that that was what -- I had faith
9 in Weingarten, that's the reason I done that.

10 Q. Were you ever afraid of Reid Weingarten?

11 A. Well, let's put it -- I was scared of him, yeah. I
12 didn't think when I went before the Grand Jury I was going to
13 be indicted. You know, in my opinion I hadn't done nothing
14 wrong. And after that I was in total shock there for some
15 time and I was just -- I was just easily led around after
16 that.

17 Q. When you say you were easily led around after that, are
18 you indicating that your testimony could be influenced after
19 that?

20 MR. COLE: Objection, Your Honor. I think this is
21 an important issue and we should have Mr. Fairchild's words
22 on this.

23 THE COURT: Sustained.

24 Q. Mr. Fairchild --

25 A. What I mean is, Richard Horn, he -- after Mr. Gunn give

1 me what to say, and we were going over it that night in the
2 hotel room, and he says and tell him you done it to help
3 Drew. And I says you want me to tell a damn lie? He said
4 no, no, don't tell no lie. And I said that's what you asked
5 me to do.

6 Q. Okay. My question was different though, Mr. Fairchild.
7 I wanted to ask not about the sentencing hearing, and I may
8 have jumped around on you, but about your testimony
9 generally. When you said that you were easily led around,
10 were you referring to your testimony?

11 MR. COLE: Objection, Your Honor. I think we need
12 to get Mr. Fairchild's version.

13 THE COURT: I'll sustain the objection.

14 Q. Did you feel that you were easily led around with
15 respect to your testimony?

16 MR. COLE: Objection, Your Honor. This is
17 leading. Just ask him --

18 THE COURT: Do you know what he's talking about?
19 Do you understand the question Mr. Stewart's asking you?

20 A. Yes, I think I do. I think that --

21 THE COURT: Are you easily led around?

22 A. Yeah.

23 THE COURT: You are?

24 A. Yeah. Where Mr. Weingarten was involved.

25 THE COURT: Oh. Go ahead, Mr. Stewart.

1 Q. Why were you easily led around where Mr. Weingarten was
2 involved?

3 A. Well, I just was scared. He makes me scared.

4 Q. Were you scared of Mr. Weingarten? Did you stop being
5 scared of Mr. Weingarten at any time before you testified at
6 Judge Nixon's trial?

7 A. No.

8 Q. I want to shift a little now, Mr. Fairchild.

9 THE COURT: It is time to take a break. Mr.
10 Marshal, put us in a short recess.

11 (Recess.)

12 THE COURT: Mr. Stewart and Mr. Cole, step up to
13 the side bar.

14 (At the bench off the record.)

15 THE COURT: Okay. Mr. Stewart.

16 Q. Mr. Fairchild, I wanted to ask a question about whether
17 there were any conversations you had, whether you ever talked
18 to Reid Weingarten concerning the possibility that you might
19 receive a pardon.

20 A. Yeah, I discussed it with him.

21 Q. All right. Did you bring it up with him?

22 A. Yes.

23 Q. And --

24 A. I don't remember whether Baltar brought it up, but I
25 remember discussing it with Mr. Weingarten.

1 Q. And do you remember where you were when this
2 conversation occurred?

3 A. No, I don't.

4 Q. Do you recall when it was?

5 A. No, I don't recall when it was.

6 Q. All right. Do you recall whether it was before or after
7 you had served your time?

8 A. It was before.

9 Q. All right. And what was Mr. Weingarten's response to
10 that request?

11 A. He would help me get a pardon. He would do what he
12 could to get me a pardon.

13 Q. Did he tell you when he might do that, help you get a
14 pardon?

15 A. He said he wanted to wait until Judge Nixon's case was
16 disposed of.

17 Q. Did you believe Mr. Weingarten's statements that he
18 would do what he could to help you get a pardon?

19 A. Repeat the question.

20 Q. Did you believe Mr. Weingarten's statements?

21 A. Yes.

22 Q. All right. I want to move now up to the Nixon trial.
23 Did you review with -- let me start first of all. Did you
24 know that John Baltar -- whether or not John Baltar was
25 helping the Government in trying to research the jury for

1 jury selection?

2 A. Yes.

3 Q. Did he do that with your approval?

4 A. Yes.

5 Q. Why did you approve that?

6 A. Why did I approve of it?

7 Q. Yes.

8 A. Well, I thought it would help me.

9 Q. Okay. Did you meet with Mr. Weingarten before the trial
10 of Judge Nixon in order to review your testimony that you'd
11 give?

12 A. Yeah. We met several times but, I mean, not several,
13 but more than one time, but one time that I remember real
14 well Mr. Baltar went and picked him up at the motel and
15 brought him into my office and, you know, we went over it.

16 Q. Was anybody else present other than Mr. Weingarten and
17 Mr. Baltar?

18 A. If there were, I can't recall.

19 Q. All right.

20 A. There wasn't no lawyers present.

21 Q. How did the conversation proceed during that meeting?

22 A. Well, it's between Weingarten and Mr. Baltar. Mr.
23 Baltar was making the notes.

24 Q. Did you take any notes during the meeting?

25 A. No.

- 1 Q. Did Mr. Weingarten take notes during the meeting?
- 2 A. I don't recall. He could have, but I recall Mr. Baltar
- 3 taking notes.
- 4 Q. I'd like to show you what's been marked as Petitioner's
- 5 Exhibit 1. Can you identify Exhibit 1?
- 6 A. Yeah.
- 7 Q. What is it?
- 8 A. Well, it's something that Mr. Baltar went over with me
- 9 and it's what we --
- 10 Q. Was it at the time you were preparing for your testimony
- 11 in the Nixon trial?
- 12 A. Yes.
- 13 Q. Do you recall how that was prepared, Exhibit 1? Where
- 14 did it come from?
- 15 A. Well, I think Baltar got that information from Mr.
- 16 Weingarten and Baltar had my secretary to type it up. That's
- 17 the best I remember.
- 18 Q. Did you ask Mr. Baltar to do that?
- 19 A. Best I remember, yes.
- 20 Q. And why did you want Exhibit 1 prepared, those notes?
- 21 A. Well, because my memory was bad, and I wanted to please
- 22 Mr. Weingarten.
- 23 Q. What do you mean you wanted to please Mr. Weingarten?
- 24 With respect to what?
- 25 A. Well, I mean just that. I was wanting to do what Mr.

1 Weingarten wanted me to as long as it was in -- as long as I
2 could live with it.

3 Q. All right. Are you referring to the testimony you were
4 going to give?

5 A. Yeah.

6 Q. Are you saying that you wanted to please him with your
7 testimony?

8 A. Yes, sir.

9 Q. All right. When you say as long as it was something you
10 could live with, what did you mean by that?

11 A. Well, I went along with it, with part of it but, you
12 know, if it had just been everything -- if it wouldn't have
13 been the truth, I wouldn't have went along with it.

14 Q. Was he asking you to say things that weren't true?

15 A. Well, he wanted me to say the drug bust was after the --
16 Carroll Ingram come to me after the drug bust.

17 Q. You gave that testimony at trial, Mr. Fairchild.

18 A. Yeah.

19 Q. Was that true?

20 A. No.

21 Q. Why did you give that testimony at trial?

22 A. I worried and worried, and I just don't know. I mean, I
23 know, but I shouldn't have done it, I'm sorry, but it just --
24 it was -- Mr. Baltar had a lot of influence on me, and I was
25 listening to him, and I was depending on him. And being the

1 case and the United States Attorney involved in it, I didn't
2 think it would -- you know, the whole thing was just -- I was
3 in a state of shock. And I knew what had happened to me, and
4 I just didn't think nothing was wrong with it. But now I
5 know it is.

6 Q. Let me ask also about your trial testimony that the call
7 from Bud Holmes' farm came before Drew's case was passed to
8 the files. Why did you give that testimony?

9 A. The same reason.

10 Q. And what reason is that?

11 A. To please Weingarten.

12 Q. Was it truthful at the time?

13 A. No.

14 Q. On those two matters with respect to the dates, did Mr.
15 Weingarten tell you that you should give that testimony?

16 A. Repeat the question.

17 Q. On those two items, whether Carroll Ingram approached
18 you after the drug bust, whether the call from Bud Holmes'
19 farm came before the case passed to the files, those two
20 items, the dating of those two.

21 A. Yeah.

22 Q. Did Mr. Weingarten tell you that that's what you should
23 say?

24 A. He told me or either Baltar told me that that's what
25 Weingarten wanted me to say.

1 Q. Do you recall whether -- do you have any recollection --
2 and I need to just probe here once -- do you have any
3 recollection that Mr. Weingarten said that at the meeting you
4 had in your office with Mr. Baltar and Mr. Weingarten when
5 Exhibit 1 was prepared?

6 A. I think Weingarten was talking to Baltar and told Baltar
7 that and what to write down.

8 Q. And you heard that, too, because you were present?

9 A. Yeah.

10 Q. Do you recall any other occasion on which Mr. Weingarten
11 stated that you should say that -- make that -- give that
12 testimony about those two items?

13 A. We went over it more than one time, but this particular
14 time that this was -- notes was taken, I remember that.

15 Q. Following Judge Nixon's trial, did you make any effort
16 to try to get a pardon?

17 A. Yes, I did. I had Baltar to make an effort and he just
18 said wait until after the final disposal.

19 Q. Why did you ask after Judge Nixon's trial had ended?

20 A. Well, of course, I wanted to get my name cleared up as
21 soon as possible.

2 Q. Let me ask you about Exhibit 1. Did you review Exhibit
3 1, those notes that were typed up, while you were preparing
4 to testify at trial?

5 A. Yes.

1 Q. And did you attempt, while you testified at trial, to
2 follow what was in Exhibit 1?

3 A. Yes.

4 Q. Why did you do that?

5 A. It's the same reason that I've stated before.

6 Q. And what's that?

7 A. To please Mr. Weingarten.

8 MR. STEWART: I have no further questions, Your
9 Honor.

10 THE COURT: Mr. Cole.

11 CROSS-EXAMINATION BY MR. COLE:

12 Q. Good afternoon, Mr. Fairchild. Mr. Fairchild, did you
13 testify truthfully at trial to the best of your knowledge and
14 ability?

15 A. No.

16 Q. You intentionally lied at trial?

17 A. Well, I was led to believe that what I was going to say
18 would be all right.

19 Q. So you intentionally lied at trial; is that what you're
20 saying?

21 A. That's what I said, what I said wasn't the truth.

22 Q. And you knew it wasn't true when you said it?

23 A. Yeah.

24 Q. And you said it anyway?

25 A. Ruh?

1 Q. And you said it anyway?

2 A. Yeah.

3 Q. You've done a lot of testifying about this matter,
4 haven't you?

5 A. Yes, sir.

6 Q. You testified in the Grand Jury twice?

7 A. Yeah.

8 Q. You testified in Congress two days; isn't that right?

9 A. Yeah.

10 Q. You testified at trial?

11 A. Yeah.

12 Q. Now you're testifying here again?

13 A. Yeah.

14 Q. You had lawyers representing you at trial; is that
15 right?

16 A. Yeah.

17 Q. You had one representing you in Congress when you were
18 there?

19 A. Yeah.

20 Q. You have a lawyer representing you today?

21 A. Well, he's in the audience, yeah.

22 THE COURT: He's where?

23 A. In the audience here.

24 Q. And you've just -- I don't want to get into what you
25 discussed with your lawyer, Mr. Fairchild, but you've been

- 1 candid with them, you've gone over what you've said at trial
2 with them, you discussed your testimony with them?
- 3 A. Yeah. He's read it. He's read the testimony.
- 4 Q. He helped you get ready for the congressional testimony;
5 is that right?
- 6 A. Yes.
- 7 Q. Now, Mr. Fairchild, when you testified in Congress, that
8 was just this last July, right?
- 9 A. Yes.
- 10 Q. This whole case was all over and done with, wasn't it?
- 11 A. It was what?
- 12 Q. This trial of Judge Nixon, the whole case with Judge
13 Nixon, was over and done with, wasn't it?
- 14 A. Yes.
- 15 Q. You weren't afraid of Reid Weingarten anymore, were you?
- 16 A. No.
- 17 Q. He wasn't even a prosecutor anymore, was he?
- 18 A. No.
- 19 Q. Did you tell the truth when you were in Congress?
- 20 A. Yes.
- 21 Q. Let's first start with Carroll Ingram. Your testimony
22 here today, Mr. Fairchild, is that Reid Weingarten told you
23 to say that Carroll Ingram approached you after the drug bust
24 in order to put Judge Nixon in the oil deal. Reid Weingarten
25 told you to say that; is that right?

1 A. Him or John Baltar, yes, sir. They were doing all the
2 talking.

3 Q. And if John Baltar told you that, it was relaying a
4 message from Reid Weingarten; is that what you're saying?

5 A. Yeah.

6 Q. That's not what you testified to in Congress, is it?

7 A. Yeah.

8 Q. It is?

9 A. Well, I don't remember the exact word for word.

10 Q. Let's go to Page 65 of day two. You were under oath in
11 Congress, weren't you, Mr. Fairchild?

12 A. Yeah.

13 Q. Do you recall being asked the following questions and
14 giving the following answers? You are discussing at this
15 time the date that Carroll Ingram approached you in your
16 trial testimony about that. Mr. Stewart is asking you
17 questions:

18 Question: Do you have any recollection that Mr.
19 Weingarten encouraged you to give that wrong date?

20 Your answer Mr. Fairchild: No.

21 Question: Do you have any explanation for why you gave
22 that wrong date?

23 Your answer Mr. Fairchild: No.

24 Question: You can't recall the reason why you did
25 that?

1 Answer: No.

2 Question: Do you recall whether you did it to try and
3 please Mr. Weingarten?

4 Answer: No.

5 THE COURT: Who was asking these questions?

6 MR. COLE: Mr. Stewart was asking these questions.

7 Q. Question: You just don't recall one way or the other?

8 Answer: No.

9 That was your testimony under oath in Congress, wasn't
10 it, Mr. Fairchild?

11 A. Yeah, I testified there.

12 Q. Telling the truth then?

13 A. Well, at that time I couldn't recall. I thought that
14 was the truth, what I was saying at that time just like what
15 I've said here.

16 Q. What's happened to refresh your recollection, Mr.
17 Fairchild, so dramatically from when you were under oath in
18 Congress? What's happened since then?

19 A. Well, I just can't remember, that's all.

20 Q. So the testimony you gave us today now all of a sudden
21 you say you have a recollection. How did you get that
22 recollection, Mr. Fairchild?

23 A. I went over and read and reread a lot of this
24 information, discussed this with different ones.

25 Q. With who?

1 A. With the people, my brother, and --

2 Q. I'm just talking about when Carroll Ingram approached
3 you. You talked about that with your brother?

4 A. Yeah.

5 Q. So it's your brother's recollection that you have today;
6 is that what you're telling us?

7 MR. STEWART: Objection.

8 THE COURT: Overrule.

9 Q. Is it your recollection or your brother's recollection
10 you're giving us today, sir?

11 A. Well, he refreshed my memory.

12 Q. And he refreshed your memory about the fact that Reid
13 Weingarten instructed you to tell something that wasn't true
14 under oath? Did he refresh your recollection about that, Mr.
15 Fairchild?

16 A. No.

17 Q. Where did you get that from?

18 A. Well, I just don't remember.

19 Q. When you testified in Congress, though, you said Reid
20 Weingarten didn't have anything to do with that, did he?

21 A. I don't remember saying that, but if I did --

22 Q. Another question you were asked was whether when Judge
23 Nixon called, it was before or after the case was passed to
24 files. Now, at trial you testified that it was before the
25 case was passed to files; isn't that right?

1 A. Yeah.

2 Q. You were as a matter of fact cross-examined pretty
3 closely and carefully on that point, weren't you?

4 A. Yeah.

5 Q. Are you telling us that you intentionally lied about
6 that at the trial?

7 A. That's the way I remembered it at that time.

8 Q. So you thought you were telling the truth at that time?

9 A. Yeah.

10 Q. And the only thing that's changing your recollection now
11 is that your brother Rodney has told you something different?

12 A. Yeah.

13 Q. Now, Mr. Fairchild, if I was to tell you that Rodney was
14 wrong, would that change your recollection back?

15 A. Well, that would all depend what the circumstances were.

16 Q. Just if Rodney was dead wrong on this point. Just take
17 that as a given for a minute. Would that change your
18 recollection back?

19 A. If you told me Rodney was dead wrong?

20 Q. Yeah. And if I could prove it to you. I'll even go a
21 step further. Would that change your recollection?

22 A. Well, if you could prove it.

23 Q. Would that change your recollection?

24 A. Well, I don't know how to answer that but one way I'll
25 answer it, I would believe Rodney before I would somebody

1 else that I didn't know.

2 Q. Okay. Anything else you intentionally lied about at
3 trial, Mr. Fairchild?

4 A. Ung-ugh.

5 Q. Just the date of the Carroll Ingram approach; is that
6 the only one?

7 A. And --

8 Q. Let's see. I think I have a note here. And the date
9 that the case was passed to files. But you're saying at the
10 time you did not intentionally lie about that; is that right?

11 A. That's right.

12 Q. So we're only left with -- the Carroll Ingram testimony
13 is the only thing you're saying was inaccurate at the time
14 you testified; is that right?

15 MR. STEWART: Objection.

16 THE COURT: Well, I'll sustain the objection. I
17 really -- I must say that the picture of Mr. Fairchild's
18 testimony -- should I put it -- is a bit puzzling. I don't
19 need to belabor the point.

20 Q. Mr. Fairchild, let's talk about your sentencing very
21 briefly. I'd like to just cover a few points with you
22 briefly and then we'll let you go.

23 You said you received a written instruction from Mr.
24 Gunn about what to say at your sentencing?

25 A. Yes.

1 Q. Now, when you were in Congress I believe you said that
2 came from Mr. Horn; is that right?

3 A. No. If I said that, that certainly wasn't the truth.

4 Q. And you said exactly what it was Mr. Gunn wrote down on
5 this piece of paper; is that right?

6 A. Yeah, I said it.

7 Q. Word for word; is that right?

8 A. Yes.

9 Q. Do you remember what it was, Mr. Fairchild?

10 A. No. If I had a copy of it to look at, I would.

11 Q. And this is what you said on direct testimony was
12 exactly what Reid Weingarten required you to say; is that
13 right?

14 A. No, it's not what he required me to say. It's what
15 Wallace Gunn told me that Reid Weingarten said to say.

16 Q. Okay. And you were afraid to not say it; is that right?

17 A. Yes.

18 Q. Mr. Fairchild, it's not going to take long, could you
19 just read to the Court what it is you said at sentencing?
20 That's just the very beginning.

21 A. Your Honor, I made a mistake. In so doing, I violated
22 the laws of the United States. I am sorry. I have
23 cooperated with Mr. Weingarten and I pledge to continue
24 cooperating. I have pled guilty to violating this law and I
25 stand before this Court, Your Honor, ready to receive

1 whatever sentence you impose. Thank you.

2 Q. That was it, huh?

3 A. Yeah.

4 Q. Anything in there that's not true? Any statement in
5 this sentencing that you made that was not true?

6 A. I can't say right now. I'm not thinking clear now. But
7 I can't think of anything that's not true.

8 Q. You were sorry, weren't you?

9 A. Well, I was sorry that I got mixed up in this thing, but
10 I didn't think I had done anything wrong.

11 Q. We'll move on to the pardon for a few minutes, Mr.
12 Fairchild. When you had discussions about the pardon with
13 Mr. Weingarten, was Mr. Baltar present?

14 A. Yes.

15 Q. Were any of your lawyers present?

16 A. I don't recall, no.

17 Q. You were present; is that right?

18 A. Yeah.

19 Q. And when you spoke with Mr. Weingarten, he told you of
20 the procedures for the pardon application process; isn't that
21 right?

22 A. Yes.

23 Q. And he never asked you to testify to anything falsely in
24 order for you to get the pardon, did he?

25 A. Well, I've tried to describe that he told Mr. Baltar

1 what for me to say.

2 Q. Well, no, I'm asking now in relation to the pardon, Mr.
3 Fairchild. Did Mr. Weingarten give you any conditions on
4 this pardon that he said he would get you? Did he say Wiley,
5 you got to say these things even though they're not true, or
6 I won't help you get a pardon?

7 A. No, he didn't say that to me.

8 Q. As a matter of fact, your understanding was that as long
9 as you told the truth, he would convey that information to
10 the pardon attorney that you had told the truth; isn't that
11 right?

12 A. I understood that he would help me, yeah.

13 Q. As long as you told the truth; is that right?

14 A. Well, he put it in that phrase, yeah. I mean, not --
15 no, he didn't put it in that phrase. He just -- like I said,
16 his contact was with Baltar and mine was with Baltar.

17 Q. He never specifically said he'd help you get a pardon,
18 did he?

19 A. Yeah, he said he would help, he would try, he would do
20 what he could.

21 Q. Mr. Fairchild, again, when you testified in Congress,
22 you testified truthfully; is that right?

23 A. To the best of my memory, yeah.

24 Q. Page 75 of day two. This is again questioning from Mr.
25 Stewart. He asked you this question:

1 Question: Then you testified for the prosecution in
2 Judge Nixon's case and it was your understanding that the
3 prosecutor would help you get a pardon; is that right?

4 Answer: He never specifically said that he would. I
5 don't -- he led me to believe that he would help me get a
6 pardon.

7 Question: All right. You tried to testify in a way
8 that would please Mr. Weingarten?

9 Answer: Yes. As long as I stayed with the truth.
10 Is that the truth when you testified to that, Mr.
11 Fairchild?

12 A. To the best of my memory.

13 Q. So it was only if you told the truth in your mind. I'd
14 also like to bring to --

15 THE COURT: Did you answer that question? Was that
16 a question, Mr. --

17 Q. Yes. It was only the truth in your mind and then Mr.
18 Weingarten would tell the pardon attorney that you had told
19 the truth?

20 A. Yeah.

21 Q. Again, on day one, Page 112. Your answer was, and I
22 quote: He didn't promise to get a pardon, he just led me to
23 believe he'd do everything he could to help me.

24 There was no specific promise from Mr. Weingarten, was
25 there?

1 A. Well, the way I interpreted it, it was. I had taken it
2 as that.

3 Q. But that was your own mind working. He never told you
4 that, did he?

5 A. I don't remember all of the discussions, no.

6 Q. Now, he also talked about Drew's case. He said he'd
7 help with Drew's case; is that right?

8 A. Yeah.

9 Q. Did he say that specifically?

10 A. Yeah.

11 Q. Again, Page 113. You were under oath in Congress.
12 First day you were testifying.

13 MR. STEWART: Your Honor, if we could identify his
14 questioning, that's all.

15 MR. COLE: Mrs. Naughton is questioning him at this
16 time.

17 THE COURT: Is she a staff member or something?

18 MR. COLE: Yes, Your Honor.

19 Q. Actually before I get to that, Mr. Fairchild. When was
20 it that Mr. Weingarten and you talked about Drew's case?

21 A. I can't remember dates.

22 Q. Was it around the time of your plea? I think that's
23 what you testified.

24 A. The best of my memory, yes.

25 Q. Isn't it a fact, Mr. Fairchild, that it was only after

1 Drew's plea fell apart and the Federal Government took his
2 case on that he talked to Mr. Weingarten about this?

3 A. I don't remember.

4 Q. Would it refresh your memory to hear your testimony in
5 Congress?

6 A. Huh?

7 Q. Would it refresh your memory to hear your testimony in
8 Congress on this?

9 A. Well, it might.

10 MR. STEWART: Objection. If he wants to refresh
11 his memory, he can give him the testimony. If he wants to
12 impeach him, he can read it.

13 THE COURT: He can refresh his memory if it would
14 help him. Would it help you to see what he's reading from?

15 A. If you read me what he's --

16 THE COURT: All right. Read it to him slowly.

17 MR. COLE: All right.

18 Q. Page 112 to 113, question by Mrs. Naughton:

19 Question: And did you also discuss Drew's case with
20 Reid Weingarten? By then the Federal Government had indicted
21 Drew as well, right?

22 Answer: Yes.

23 Question: And Reid was handling that case, correct?

24 Answer: Yeah.

25 Question: Reid Weingarten was handling that. Did he

1 ever promise you that he would seek leniency for Drew or
2 dismiss his case or show any leniency towards Drew if you
3 would testify a certain way in Judge Nixon's trial?

4 Answer: Well, what he said, he'd do what he could to
5 help Drew.

6 Does that refresh your recollection?

7 A. Yeah.

8 Q. It was after Drew had been indicted by the Federal
9 Government; is that right?

10 THE COURT: What's your answer, Mr. Fairchild? Did
11 you hear the question?

12 A. Yeah, I've heard the question, but my mind's not fresh
13 and I can't -- he needs to ask it again.

14 Q. I'll move on to a different question, Mr. Fairchild.

15 Did you ever change your testimony, did you ever alter
16 your testimony, did you ever lie in order to please Mr.
17 Weingarten because of the pardon or because of Drew's case?

18 A. No. I don't recall that, no.

19 Q. So everything you said at trial was true to the best of
20 your knowledge and not done to try and win Mr. Weingarten's
21 favor on these points; is that right?

22 A. I'm not following you good. Like I say, I haven't slept
23 since 12:00 o'clock last night and my mind's just not that
24 clear on everything.

25 Q. Now, again with Drew's case, he never specifically

1 promised you he'd do anything, did he?

2 A. Well, he said -- the best I remember he said he'd do
3 what he could.

4 Q. But he never specifically promised you that, did he?

5 MR. STEWART: Objection. Argument.

6 MR. COLE: I'll go on then and impeach, Your Honor.

7 Q. Were you asked this question and given this answer in
8 the congressional testimony? Page 113, question by Mrs.

9 Naughton:

10 Question: Did he ever tell you that Drew's case -- how
11 Drew's case ended up would depend on your testimony at Judge
12 Nixon's trial?

13 Answer: No, he didn't put it that way. He led me to
14 believe if I got up there and told the truth that he would do
15 everything he could to help Drew and I believed he would.

16 Was that true when you said it?

17 A. That's correct.

18 Q. So again this was your impression that you got, Mr.

19 Fairchild; it wasn't a specific promise, was it?

20 A. It was my impression, yes.

21 Q. Mr. Fairchild, let's talk about the script for a minute,
22 if we can, that was prepared by Mr. Baltar for you. You
23 prepared an affidavit in this case; did you not?

24 A. Yes.

25 Q. Mr. Stewart, Mr. Holleman, they asked you to do that?

- 1 A. Yes.
- 2 Q. At the time you prepared that, did you tell them
3 anything about the script?
- 4 A. Did I tell who?
- 5 Q. Mr. Stewart or either of the Mr. Hollemans anything
6 about the script being prepared by Mr. Baltar?
- 7 A. I probably did, but I don't --
- 8 Q. You signed the affidavit that they gave you of the
9 declaration, didn't you?
- 10 A. Yeah.
- 11 MR. COLE: Do you have your exhibit of Mr.
12 Fairchild's declaration?
- 13 Q. I'm handing you Exhibit 15, Mr. Fairchild. Is that your
14 declaration with your signature on it?
- 15 A. Yes.
- 16 Q. No mention there of the script, is there?
- 17 A. Yeah.
- 18 Q. Now, who was at this meeting? Reid Weingarten was
19 there? Excuse me. I'm shifting now to the meeting when the
20 script, the so-called script, was allegedly prepared.
- 21 A. Baltar.
- 22 Q. Baltar was there?
- 23 A. I don't understand the question. You were talking about
24 this?
- 25 Q. Forget about that document now. We're now going back to

1 the day that Mr. Weingarten was preparing you for your
2 testimony.

3 A. Yeah.

4 Q. And Mr. Baltar prepared the script from that day; do you
5 recall that?

6 A. Yes.

7 Q. Who was there that day? Mr. Weingarten was there?

8 A. Yes.

9 Q. Mr. Baltar was there?

10 A. Yes.

11 Q. You were there?

12 A. Yes.

13 Q. Agent Lawless was there, too, wasn't he, from the FBI?

14 A. I don't say he wasn't, but I don't remember.

15 Q. He might have been there?

16 A. Yes.

17 Q. This was the main meeting for you to be prepared for
18 your testimony; is that right?

19 A. The best of my memory, yeah.

20 Q. And during this meeting Mr. Baltar took notes, didn't
21 he?

22 A. Yeah.

23 Q. You didn't ask him to go and get Mr. Weingarten's notes,
24 Mr. Baltar just took notes while you were all talking there;
25 isn't that right?

1 MR. STEWART: Objection. Compound.

2 THE COURT: Yeah, it is. It's a double.

3 MR. COLE: Excuse me. I will rephrase the
4 question.

5 Q. While you were sitting there, Mr. Baltar was taking
6 notes, wasn't he?

7 A. Yeah.

8 Q. And he was taking notes based on what you and Mr.
9 Weingarten were saying, wasn't he?

10 A. Yeah.

11 Q. You didn't ask him to go and grab Mr. Weingarten's notes
12 later, did you?

13 A. I didn't ask him what?

14 Q. To go and get Mr. Weingarten's notes after this
15 meeting.

16 A. I don't remember.

17 Q. And the script that was written, which is Exhibit 1,
18 which is up there in front of you, that came out of the notes
19 that Mr. Baltar took while you and Mr. Weingarten were
20 talking; isn't that right?

21 A. Best of my memory, yeah.

22 Q. And you've testified about that before in Congress,
23 haven't you?

24 A. Yeah.

25 Q. And you told the truth then about it, didn't you?

1 A. Yeah.

2 Q. Mr. Baltar didn't copy those notes down from Mr.
3 Weingarten's notes, did he?

4 A. I don't know whether he did or not.

5 Q. All you saw was him taking notes independently while you
6 and Mr. Weingarten were talking; is that right?

7 A. Yeah, he made some notes. Now, whether he got some
8 notes from Mr. Weingarten or not, he could have.

9 Q. I understand. I mean, he could have done a number of
10 things. He could have gone down to the grocery store and
11 picked up the notes, too. But I'm asking what you saw, Mr.
12 Fairchild.

13 A. I don't remember Mr. Weingarten giving Baltar some
14 notes.

15 Q. Now, the time you spent at this session, Mr. Weingarten
16 never said what answers you should give, did he?

17 A. Well, it's been so long ago until he was talking to Mr.
18 Baltar, Mr. Baltar was making the notes.

19 Q. Did Mr. Weingarten tell you what answers you should
20 give?

21 A. Like I say, he was talking to Mr. Baltar, Weingarten
22 was.

23 Q. Did Mr. Weingarten tell Mr. Baltar what answer you
24 should give?

25 A. Well, Baltar was taking down there.

1 Q. Mr. Weingarten was asking questions. Was he also
2 providing answers, Mr. Fairchild?

3 A. All I remember this is what come out of the
4 conversation.

5 Q. Do you recall testifying about this in the congressional
6 hearing?

7 A. No. I know I did, but I don't recall that.

8 Q. This is day two, questioning by Mr. Stewart on Page 69:

9 Question: Okay. And do you recall Mr. Weingarten
10 suggesting whether any particular answers ought to be given
11 or would be accurate or appear to be accurate?

12 Answer: No, I don't.

13 Is that true when you testified to that, Mr. Fairchild?

14 A. Yeah.

15 Q. Mr. Baltar, he provided some answers, didn't he?

16 A. Yeah.

17 Q. These notes, Exhibit 1, that wasn't typed until after
18 Reid Weingarten left your office; isn't that a fact?

19 A. That's right.

20 Q. So they were never typed while he was there?

21 A. No.

22 Q. So he didn't see them in the typed form while he was
23 there, did he?

24 A. Not while he was in my office.

25 Q. Did you ever give him a copy of these notes?

1 A. I didn't.

2 Q. Do you know whether Reid ever read them?

3 A. No, I don't know whether he read them or not.

4 Q. Did Reid ever tell you to use these notes?

5 A. No, I don't recall Mr. Weingarten telling me to use them
6 notes.

7 Q. Just coming from Mr. Baltar; is that right?

8 A. Yes.

9 Q. Is there anything in those notes, Mr. Fairchild, that's
10 untrue?

11 A. To the best of my knowledge, no. I'm still confused
12 now. I'm still --

13 Q. Take a good look. Let me know.

14 A. I'm just not able to concentrate and read and understand
15 this with the state of mind that I'm in.

16 Q. Mr. Fairchild, did anyone from the Government at any
17 time instruct you to lie or in any way change your testimony
18 at Judge Nixon's trial?

19 A. They didn't instruct me to.

20 Q. Nobody instructed you to?

21 A. No.

22 Q. Mr. Fairchild, you were indicted in September of 1984;
23 is that correct?

24 A. Yeah.

25 Q. You had some lawyers right after you got indicted,

- 1 didn't you?
- 2 A. Yeah.
- 3 Q. You had Wallace Gunn, Karl Kepper?
- 4 A. Yeah.
- 5 Q. And were these the lawyers that told you you were
- 6 guilty?
- 7 A. Mr. Arendall was the one that told me that I was guilty.
- 8 Q. What about Mr. Kepper and Mr. Gunn? Were they the ones
- 9 that told you not to cooperate with the Government?
- 10 A. Was they the ones what?
- 11 Q. Who told you that you shouldn't cooperate with the
- 12 Government, the Government was never going to get you, and it
- 13 was not in your interest to cooperate with the Government?
- 14 A. Well, the best of my memory, it was words to that
- 15 effect.
- 16 Q. From your lawyers?
- 17 A. Yeah.
- 18 Q. That would be Mr. Gunn and Mr. Kepper?
- 19 A. Well, it would be Mr. Kepper.
- 20 Q. And then you got a new lawyer and you decided to
- 21 cooperate; is that right?
- 22 A. Yeah.
- 23 Q. Now, you talked to John Baltar a lot about this plea,
- 24 didn't you?
- 25 A. Yeah.

1 Q. And the plea negotiations that you had started with the
2 proffer; is that right?

3 A. Yeah.

4 Q. And at the proffer did Reid Weingarten suggest what you
5 should be saying?

6 A. If he did, I don't remember it. There, again, he was
7 talking to my lawyers and they'd go out in the room and be
8 gone for 20 or 30 minutes and then they would come back in
9 there and we would be sitting in the room and they would come
10 back.

11 Q. And what you told them at the proffer, was that the
12 truth to the best of your knowledge at the time?

13 A. Yeah.

14 Q. And Reid Weingarten never told you or instructed you to
15 say anything about the date of the Ingram approach; isn't
16 that right?

17 A. Well, him or Baltar one did.

18 Q. When you testified in Congress you said it wasn't Reid
19 Weingarten; isn't that right?

20 A. Well, yeah, that's right.

21 Q. Was it true when you testified at Congress?

22 A. Yeah.

23 Q. Now, you testified that you tried to think of things
24 that you could come up with to give the Government; is that
25 right?

- 1 A. Yeah.
- 2 Q. Were these always true things?
- 3 A. Huh?
- 4 Q. Were they only true things that you would come up with
5 to give the Government in return for a plea?
- 6 A. Yeah.
- 7 Q. You never made things up or made stories up, did you?
- 8 A. No.
- 9 Q. And you came up with the phone call, you remembered
10 that; is that right?
- 11 A. Yeah.
- 12 Q. And that was true, wasn't it?
- 13 A. Yeah.
- 14 Q. And you testified to that at trial?
- 15 A. Yeah.
- 16 Q. And you testified to it truthfully; is that right?
- 17 A. Yeah.
- 18 Q. What you wanted initially was to have all your charges
19 dropped; isn't that right?
- 20 A. Yes.
- 21 Q. And when you went for the proffer, you were hoping that
22 what you told them was going to be important enough to
23 warrant you getting all your charges dropped; isn't that
24 right?
- 25 A. Yeah.

1 Q. And what they told you was, it's good but it's not good
2 enough; isn't that right?

3 A. Yes.

4 Q. And that what you'll get instead is a plea bargain. If
5 you'll tell the truth and testify truthfully at trial,
6 they'll drop the perjury count against you and they'll
7 recommend no jail time; isn't that right?

8 MR. STEWART: Objection. Compound.

9 THE COURT: Overrule. You can answer.

10 Q. Want me to repeat the question?

11 A. Yeah.

12 Q. After the Government told you what you told them isn't
13 good enough for a complete pass, a complete dropping of all
14 the charges, they then said we will give you the following
15 deal, Mr. Fairchild. If you'll testify truthfully at trial,
16 we'll drop the perjury charge, you can plead to the gratuity
17 charge, and we will not recommend any jail time for you; is
18 that right?

19 A. My lawyers told me if Weingarten was satisfied with my
20 testimony, that's what he would do. Or told -- or Baltar
21 told me that.

22 Q. But satisfied with your testimony meant you had to tell
23 the truth; isn't that right?

24 A. Well, I don't know what you -- you need to ask Mr.
25 Weingarten that.

1 Q. I'm asking you how you took it, Mr. Fairchild.

2 A. I took it if my testimony satisfied him.

3 Q. What did you think it was going to take to satisfy him?

4 A. Well, what I testified to.

5 Q. Well, I'm not sure what you testified to, Mr.

6 Fairchild. Is it that you had to tell the truth?

7 A. Well, I've stated that everything that I testified to
8 wasn't the truth.

9 Q. I understand that. But you didn't tell Mr. Weingarten
10 it wasn't the truth, did you?

11 A. No, I didn't.

12 Q. As far as you know, out of your mouth, and from your
13 communications to him, he thought you were telling the
14 truth?

15 MR. STEWART: Objection as to what Mr. Weingarten
16 thought.

17 THE COURT: I'll sustain the objection. We're
18 whipping a dead horse anyway.

19 Q. One more question, Mr. Fairchild. Your understanding
20 about this informal deal came from Mr. Hess, didn't it?

21 A. Repeat the question.

22 Q. You had an understanding you testified to about some
23 informal deal with the Government.

24 A. Yeah.

25 Q. That came from Mr. Hess; is that right? He explained it

1 to you?

2 A. To the best of my memory, yeah.

3 Q. And he also told you that it probably wasn't going to
4 happen and it was purely based on Reid Weingarten's decision
5 of whether the evidence showed you were not guilty, didn't
6 he?

7 A. Repeat that.

8 MR. COLE: I'll withdraw the question, Mr.
9 Fairchild. Your Honor, I have nothing further at this time.

10 THE COURT: Mr. Stewart.

11 RE-DIRECT EXAMINATION BY MR. STEWART:

12 Q. Mr. Fairchild, I just have a couple of questions. While
13 Mr. Baltar worked for you, did you rely on him with respect
14 to his memory?

15 A. Yes. He had a very good memory. And the things that he
16 was involved in, I didn't try to memorize.

17 MR. STEWART: That's all I have, Your Honor.

18 MR. COLE: Nothing further.

19 THE COURT: You may step down, Mr. Fairchild.

20 MR. STEWART: Want to keep going? Your Honor, we
21 would call Barry Hess.

22 BARRY HESS, having first been duly sworn, was examined and
23 testified as follows:

24 DIRECT EXAMINATION BY MR. STEWART:

25 Q. Good evening.

- 1 A. Good evening.
- 2 Q. State your full name, please?
- 3 A. I'm Barry Hess.
- 4 Q. And where do you live?
- 5 A. I live in Montrose, Alabama.
- 6 Q. And what's your business?
- 7 A. I'm a lawyer.
- 8 Q. How long have you practiced law?
- 9 A. I've been practicing law a little over 26 years.
- 10 Q. And do you have any specialty?
- 11 A. I'm not certified as a specialist but about 80 percent
- 12 of my practice is in criminal defense work.
- 13 Q. And how long have you been handling criminal defense
- 14 work?
- 15 A. 25 years.
- 16 Q. Due to the hour, I'm going to pass some of the
- 17 biographical background. Did there come a time when you
- 18 represented Wiley Fairchild?
- 19 A. Yes.
- 20 Q. And what -- do you recall when that was?
- 21 A. From looking at my daybooks and trying to reconstruct
- 22 it, I believe it was November the 6th of 1984.
- 23 Q. Do you recall whether you came in after the indictment
- 24 of Mr. Fairchild?
- 25 A. Yes, sir. It was sometime after the indictment.

1 Q. Who had represented Mr. Fairchild until you entered the
2 picture?

3 A. I was called by Mr. Charles Arendall who was of the
4 Mobile Bar, senior partner at that time in Hand, Arendall,
5 Bitzo, Greaves and Johnstone. He had been associated by Mr.
6 Wallace Gunn and there was a Hattiesburg attorney by the name
7 of, I believe, Karl Kepper who had been involved in the
8 case. Mr. Arendall got me to accompany him to come over to
9 Hattiesburg to meet with various people.

10 Q. On that first trip to Hattiesburg, with whom did you
11 meet?

12 A. Mr. Arendall, myself, Mr. Gunn, Mr. Fairchild, and I
13 believe Mr. Fairchild's brother was present, and I believe
14 Mr. Fairchild's son, Drew, was present. Mr. Gunn's law
15 partner was in and out. I don't remember him staying for any
16 great length of time.

17 Q. Did you come to know John Baltar while you represented
18 Mr. Fairchild?

19 A. John Baltar was present. I'm sorry.

20 Q. Okay.

21 A. I think John Baltar was present just about everytime I
22 met with Mr. Fairchild.

23 Q. All right. Did he participate in some of your efforts
24 on behalf of Mr. Fairchild?

25 A. In our discussions and so forth, very definitely.

1 Q. Did he attend the meetings you had with Government
2 agents or with prosecutors on occasion?

3 A. I think he attended on some occasions but not all.

4 Q. What was your -- strike that.

5 Did you engage in settlement conversations or plea
6 bargaining conversations with the Federal prosecutors on
7 behalf of Mr. Fairchild?

8 A. Yes, I did.

9 Q. Were you ever present during a meeting at which a
10 proffer was made by Mr. Fairchild and that proffer was tape
11 recorded?

12 A. I understand there was one made on November 1st. That
13 was before I was involved in the case. I'm sure somebody
14 told me something about it. I never heard the tape. I
15 believe you showed me a transcript last week.

16 Q. And do you have a recollection of being there?

17 A. I wasn't there.

18 Q. During any of your meetings with -- now, with whom did
19 you meet who represented the Government?

20 A. Reid Weingarten and Jan Little, an FBI agent by the name
21 of White-Spunner, and I believe a couple other FBI agents
22 from time to time, whose names I don't fully recall.

23 Q. And who was in charge of the Federal effort?

24 A. Mr. Weingarten.

25 Q. Did you ever hear him make any references to -- use the

1 term "smoking gun"?

2 A. Not that I recall.

3 Q. Do you recall what offer was made by the Federal
4 prosecutors for a plea?

5 A. Well, we had some -- you know, there's no way I can
6 recall the words of it. We had some discussions. I conveyed
7 the results of those discussions to my client who gave me no
8 immediate response. And time drug out until whatever the
9 last day was to produce documents to go to trial. It was set
10 for trial, I believe, December 3rd. And on that last day I
11 gave two crates of documents to Reid Weingarten because we
12 had not concluded the negotiations at that time.

13 I know that I originally started out, I wanted
14 immunity. I know that Mr. Weingarten's position was that he
15 would have been glad to have granted immunity early on in the
16 investigation, but that it had progressed to the point of
17 indictment and that he would not recommend immunity on the
18 case.

19 I know he told me that he was not primarily interested
20 in Wiley Fairchild. And that he thought that if Wiley
21 Fairchild were convicted, in his professional judgment, he
22 would be sentenced to the penitentiary because of the perjury
23 charge. This was just part of the discussions we had.

24 Ultimately he made the offer that's represented in the
25 letter that he sent me in the agreement that was attached

1 thereto.

2 Q. Let me just ask the question: Did Mr. Weingarten state
3 in whom he was primarily interested?

4 A. There was no question that the investigation was focused
5 on Judge Nixon. I think I knew that from reading the papers
6 before I had ever come over there on November 6.

7 Q. Was there ever any discussion concerning the impact on
8 these plea negotiations, the Bail Reform Act of 1984?

9 A. Yes. There were no discussions with Reid Weingarten
10 about it that I recall. There were some discussions between
11 Mr. Fairchild and myself.

12 Q. What was the substance of that?

13 A. The Bail Bond Reform Act of 1984 had come into being
14 just a few weeks before I came initially to Hattiesburg. I
15 had read it, I was familiar with it; I was familiar with the
16 way the people in our district were interpreting it, which is
17 strict enforcement, and I advised Mr. Fairchild that if he
18 went to trial on December 3rd and were he to be convicted, I
19 could not promise him the Trial Judge would set an appeal
20 bond for him. I made known the contents of the Act. I sent
21 him a copy of the Act. In fact, in my district only one
22 person has made bond on an appeal since that Act passed.

23 Q. Did you ever receive a decision from Mr. Fairchild
24 concerning the plea proposal that had been made to you?

25 A. On the same day that was the last day to produce

1 documents, I want to say it was something like the 19th of
2 November, whatever it was, on that same day after I had
3 delivered the documents, I approached Mr. Fairchild with the
4 decision. We were getting close to trial. We had to go one
5 way or the other. And he told me that he wanted to be sure
6 he spent Christmas at home.

7 Q. And --

8 A. I took that to mean he wanted me to accept the proposal
9 and we did.

10 MR. STEWART: Your Honor, do I need to go through
11 the exercise of showing him the plea documents and getting
12 them identified for the record?

13 THE COURT: No.

14 MR. COLE: No, Your Honor, he doesn't need to do
15 that.

16 MR. STEWART: All right.

17 Q. Was there any conversation between you and Mr.
18 Weingarten concerning -- in connection with these plea
19 conversations -- concerning the possibility that he might
20 ultimately drop the gratuity charge to which Mr. Fairchild
21 was to plead guilty?

22 A. There was. And I can't tell you exactly when it took
23 place in relation to the plea settlement itself but there
24 was.

25 Q. What prompted those conversations?

1 A. If my recollection is correct, John Baltar.

2 Q. And how did he do that?

3 A. He wanted me to go back and see if there were any
4 circumstances under which this remaining count that we agreed
5 to enter a plea could be dismissed. As I recall it, they had
6 received notice from the United States of some difficulty
7 with their contracting ability on Federal projects because
8 they considered him at risk after he had been indicted. I've
9 got that correspondence and regulations in my briefcase in
10 there. And that they had a way to handle it just by changing
11 the structure of who the officers were here, there, or what
12 have you. But I think this gave rise to -- Baltar wanted me
13 to go back and see if there was any way this could be
14 dismissed. And I went back and I had such conversations.

15 Q. What did you learn from Mr. Weingarten?

16 A. It was a pleasant conversation. It was a short
17 conversation. It wasn't anything I put any weight on. It
18 was almost like he was thinking aloud to himself. And it was
19 like, well, --

20 MR. STEWART: I move to strike that observation.

21 Q. Please just stick to what he told to you.

22 A. Okay. It was like, well, if after I have completed my
23 investigation I am totally satisfied in my own discretion
24 that Mr. Fairchild was not guilty of the offense charged,
25 then I might, and I emphasize the word might, ask that the

1 count be dismissed. That's my best recollection of it. It's
2 by no means word for word.

3 Q. Did you have any judgment as to whether Mr. Weingarten's
4 statement to you on that occasion was in any way something
5 that would be enforceable?

6 A. I didn't consider it enforceable.

7 Q. All right. Did you have any judgment as to why Mr.
8 Weingarten had made that statement to you?

9 A. As I say, it was almost like he was thinking to himself
10 or thinking aloud. And I think what he was saying to me was
11 his honest reaction to what might happen somewhere down the
12 line in the future.

13 Q. Did you relate that information to Mr. Baltar and Mr.
14 Fairchild?

15 A. I either related it to them or they were present when it
16 happened. I don't remember which. But the information got
17 to them.

18 Q. Yes, sir. Did you advise Mr. Fairchild as to whether --
19 as to the likelihood of the charges being dropped after his
20 plea?

21 A. If I were asked, I would have told him they weren't
22 going to happen, but I don't remember that I was asked.

23 Q. Do you recall whether during these plea conversations
24 with Mr. Weingarten in November of 1984 there was any
25 reference, and I don't mean just Mr. Weingarten, might have

1 been with the agents or with Mrs. Little, any reference to
2 telephone toll record that somehow identified the date when a
3 phone call had been made from Bud Holmes' farm to Wiley
4 Fairchild's house?

5 A. I can't put it in November. It's sometime while these
6 proceedings were pending. There was a discussion of a long
7 distance telephone call that was supposed to have been made
8 from Bud Holmes's farm to Wiley Fairchild's residence. I was
9 told, and I don't remember by whom.

10 Q. Was it by a Federal agent or a Federal representative?

11 A. I think John Baltar, but I was told by somebody that the
12 farm was just far enough out of town to be long distance and
13 that there would be a toll record of that call. I have a
14 recollection, and I know not where it comes from, that
15 somebody told me they found the toll record. I have been
16 told this morning that that was not true, that it was a local
17 call and there would be no toll record. That's contrary to
18 my recollection.

19 Q. Who told you that this morning?

20 A. Reid Weingarten. I had a cup of coffee with Reid this
21 morning. I asked him about the toll record. It's been
22 bothering me ever since you told me it wasn't introduced at
23 the trial. I didn't see the trial. I didn't know what went
24 down at the trial.

25 Q. Do you recall what Mr. Fairchild's recollection of the

1 date of that telephone call from Bud Holmes' farm was?

2 A. I've got some notes that would show. They're notes in
3 John Baltar's printing. They're in my briefcase.

4 Q. You have no recollection of that?

5 A. Not without looking at the notes.

6 Q. We discussed it last week.

7 A. It was between two dates. I looked at my notes last
8 night when I was talking to you.

9 Q. All right.

10 A. But I can get it. It's just in the witness room.

11 Q. At this point, let's just move on.

12 A. Okay.

13 THE COURT: What, five minutes?

14 MR. COLE: I would ask, Your Honor, if he's going
15 to be asking him about the subject.

16 THE COURT: Let's take a short recess.

17 (Recess.)

18 MR. STEWART: Judge, may we approach the bench?

19 (At the bench off the record.)

20 Q. Mr. Hess, I wanted to ask you about the telephone toll
21 record we talked about earlier.

22 A. All right.

23 Q. Do you recall -- you referred to the fact that we met
24 last week in your office in Mobile.

25 A. Last Thursday.

1 Q. Okay. You remember that Mr. Mike Holleman here was with
2 me?

3 A. Certainly.

4 Q. And do you recall that you told us at that time about
5 that telephone toll record?

6 A. Yes, I do.

7 Q. And do you recall whether or not you told us at that
8 time that you learned about it from Mr. Weingarten, he had
9 been overjoyed and elated when he told you about it?

10 A. That's my recollection.

11 Q. Okay. Did something Mr. Weingarten tell you over coffee
12 this morning change that recollection?

13 A. He told me there wasn't a toll record and that it was a
14 local call.

15 MR. COLE: Excuse me, Your Honor. It's late and I
16 don't see what this issue has to do with anything quite
17 frankly.

18 THE COURT: Is that all you've got on that?

19 MR. STEWART: Yes, sir.

20 THE COURT: Okay. I'll let it stand.

21 Q. I also wanted to ask you about -- I had asked the
22 question whether Mr. Fairchild had -- well, I do want to ask
23 one question, I'm sorry. How long did you speak with Mr.
24 Weingarten?

25 A. This morning?

1 Q. This morning.

2 A. Oh, from about 9:30 until about early afternoon. About
3 9:15 until about 15 minutes of 10:00. Came right here from
4 there.

5 Q. Did you discuss any other matters with Mr. Weingarten at
6 that time that you might testify about here today?

7 A. Almost no discussion about this. I was asking really
8 how he was doing, what he was doing. Jan Little was there.
9 I was asking Jan what she was doing. Mr. White-Spunner,
10 retired FBI agent, was there. Another gentleman was there.
11 There were eight or ten people sitting at the table. Right
12 next door at the hotel.

13 Q. Do you recall anything else that was told to you by any
14 of those people that relates to your testimony here so far?

15 A. Not that I recall.

16 Q. I had asked you about whether Mr. Fairchild had any
17 recollection concerning when the phone call from Bud Holmes'
18 farm to him had occurred. Do you recall that we discussed
19 that in your office last week?

20 A. Not specifically, but I do recall that when we talked
21 last week in the office, I had not reviewed my file and I
22 told you anything that I had to say on either that occasion
23 or prior occasions when I spoke with you on the phone or
24 prior occasions when I spoke with Mr. Cole on the phone would
25 be subject to my recollection being refreshed by going

1 through my file which I did yesterday for the first time.

2 Q. Well, you did call for some files from your secretary
3 while we were there?

4 A. Yeah. We went through my daybook with you. We tried to
5 pick dates out and pin them down. We went through a very
6 brief part of the file but most of the files she brought me,
7 if you'll remember, was the two big volumes that Charles
8 Arendall's firm had filed before I ever got in the case.

9 It was late. You got there at 3:00 and left about
10 5:15. And I would say it was about the last 15 minutes or so
11 that I had a portion of my own file. And I glanced at
12 certain correspondence and showed you certain things out of
13 it, but we didn't go at length through my file on that
14 occasion.

15 Q. Have you acquired, so you've got it in your possession
16 now, that document you referred to right when we broke?

17 A. Yes, sir.

18 Q. That you had gotten from John Baltar?

19 A. It's right here.

20 Q. I'd ask you to take it out and compare it to
21 Petitioner's Exhibit 18.

22 A. This appears to be the original, or maybe not an
23 original but it's -- whether it's an original or a copy it's
24 a document that's highlighted in yellow pen. This appears to
25 be a copy of this highlighted one. Exhibit 18 being the copy

1 with the highlighted copy.

2 Q. Do they appear to be substantively identical?

3 A. Yeah.

4 Q. Did Mr. Baltar ever describe to you how he prepared that
5 document?

6 A. No, not that I recall.

7 Q. Turning for a second to the telephone toll record, did
8 you report that to Mr. Fairchild what you were told about
9 that there was a telephone toll record that related to that
10 phone call?

11 A. Truthfully?

12 Q. That's all I want.

13 A. Truthfully, I don't remember.

14 Q. Okay. Would it have been your ordinary practice to do
15 so?

16 A. To my best recollection, and we're talking about four
17 years ago, a lot of miles ago, to my best recollection the
18 discussion concerning the toll record would have been in his
19 presence. If there wasn't a toll record, then I don't know.

20 The first time I think I asked you in a conversation we
21 had, I think I brought it up on my own what about the toll
22 record with the phone call and you were in Washington, you
23 called me, and you said what toll record. And I think that
24 was the first you had heard of it. But I very definitely got
25 a recollection of a toll record and I'm told today that none

1 exists. And my recollection is not so vivid that I can give
2 it with specificity of when, where, who, what, and how. But
3 I remember in my mind there was a record of that toll and
4 that was the only call ever made from that farm to that phone
5 at Mr. Fairchild's, which I thought was a particularly
6 significant piece of evidence.

7 Q. Let me ask about one other factual matter. Do you
8 recall what Mr. Fairchild's recollection was at the time of
9 these plea negotiations when you first got into the case
10 concerning when -- let me start again.

11 Do you recall what Mr. Fairchild's recollection was when
12 you first got into the case of when Carroll Ingram had
13 approached him for an investment for Judge Nixon in relation
14 to the drug bust at the Hattiesburg airport?

15 A. On my first conference with all the people I think that
16 were present, I believe I was given a copy of some Grand Jury
17 testimony that he had given which had led to his indictment.
18 And my recollection is that I read it and that whatever
19 contents of those Grand Jury minutes were is what I was told
20 by him or by Baltar on his behalf on that occasion because
21 Baltar frequently spoke for him. It was his recollection.
22 It didn't make sense.

23 Q. Did he affirm to you that the -- that it had occurred?

24 A. I can't say he did because he really hardly expressed
25 himself. All he did on that first occasion was sort of

1 mumble. And it's just hard to get Wiley to say something
2 when Wiley don't want to say something.

3 Q. Do you recall telling me and Mr. Holleman the other day
4 that he did tell you that, that it had occurred before the
5 drug bust?

6 A. The facts as represented in that Grand Jury thing was
7 put before me. I don't remember him saying I affirm that or
8 what have you. But that was given to me on that occasion to
9 be a representation of his facts. As to when Wiley told me
10 something or when Baltar told me something for Wiley in
11 Wiley's presence is awfully hard to distinguish. There's a
12 lot of both happening.

13 Q. Did your level of involvement in Mr. Fairchild's case
14 decline after the entry of his guilty plea?

15 A. I'd say yes. I was still concerned about the sentencing
16 phase and what have you, but I no longer had a case to defend
17 as such. I wasn't preparing for trial.

18 Q. Did you insist on being present at all debriefings or
19 Federal interviews of Mr. Fairchild?

20 A. I don't have a recollection, but I feel certain that I
21 didn't.

22 Q. Did not?

23 A. Did not.

24 Q. I didn't hear you. Do you recall attending some
25 interviews and debriefings, Mr. Hess?

1 A. Sure. I attended a number.

2 Q. All right.

3 A. But they were early on. But then they were -- see,
4 after Wiley's case -- after a plea was entered in Wiley's
5 case, we developed troubles in his son's case.

6 Q. I'm not asking about that yet.

7 A. Okay.

8 Q. During the debriefings with Mr. Wiley Fairchild, were
9 there any conversations concerning the accuracy of his
10 statements in the tape recorded conversation with Skip Jarvis
11 in April of 1984?

12 A. I'm sure there probably were, but I don't remember.

13 Q. Do you recall telling me on the telephone that that was
14 discussed and that the prosecutors tried to get him to
15 repudiate those comments on the Jarvis tape?

16 A. No, but if you say I did, I assume I did.

17 Q. Does my statement in any way refresh your recollection
18 as to the events of those interviews?

19 A. Not with the specifics of any part of the evidence. I
20 remember you asking me was there any undue influence used on
21 Wiley from time to time to get him to recite the prosecutor's
22 version of the case. And my recollection is I told you that
23 in my judgment, no. That they leaned as all lawyers lean
24 when they're trying to get favorable information from a
25 witness. But did I consider it inappropriate or undue

1 influence, I didn't.

2 Q. Is it then your testimony that you did not ever observe
3 that?

4 A. I observed them leaning on him from time to time.

5 Q. No, I'm sorry, that you did not ever observe undue
6 influence yourself.

7 A. No, I didn't.

8 Q. Okay. And you would not know, would you, as to whether
9 there was undue influence exerted upon him when you were not
10 there?

11 A. I'd have no idea. All I know is what I saw, what I
12 observed.

13 Q. Did you ever talk to Reid Weingarten about when Wiley
14 Fairchild's sentencing should occur?

15 A. We -- I don't have a specific recollection, but I'm sure
16 we had several conversations because we kicked it off two or
17 three times. And usually I would file the motion, but he
18 would do something to make known that he didn't have any
19 objection to it. I remember one case, as I recall from going
20 through the files, was a letter to the Judge as to what the
21 current status of the case was. I think I showed you that
22 letter.

23 Q. Was it Mr. Weingarten's preference that the sentencing
24 be put off?

25 A. I was the one who was initiating it, but I think he

1 viewed it as to his best interest, yeah. He did not oppose
2 it at any time and did things to facilitate it on occasion.
3 It was always my motion.

4 Q. Do you recall telling us last week that you had -- that
5 Weingarten had wanted to put off the sentencing until after
6 Judge Nixon's trial?

7 A. It's my feeling that he wanted to. I can't quote him as
8 saying it but any prosecutor would want to because you got a
9 man --

10 MR. COLE: Objection, Your Honor. Gets into
11 speculation.

12 THE COURT: I'll sustain.

13 A. I'm satisfied that he concurred in my efforts to
14 postpone it.

15 Q. But my question was: Did he want to delay the
16 sentencing until after Judge Nixon's trial?

17 MR. COLE: Objection. Asked and answered.

18 THE COURT: Overrule. He can answer it if he
19 knows.

20 A. That's my opinion.

21 Q. Now, were you able to attend Mr. Fairchild's sentencing?

22 A. No, I was in trial in Mobile.

23 Q. And that was -- who covered the sentencing for you?

24 A. My law partner, Richard Horn.

25 Q. Now, did you have any involvement in representing Mr.

1 Wiley Fairchild after he was sentenced?

2 A. Subject to having my recollection refreshed, not that I
3 recall.

4 Q. Now, when you get down to the point of sentencing, do
5 you recall any conversation with Federal prosecutors -- did
6 you work out a deal with Reid Weingarten?

7 A. Yeah, I had several conversations with Jan Little on
8 occasions where Reid Weingarten would be out of pocket or
9 what have you. But he would usually be the person I would
10 have a discussion with.

11 Q. When you get down to the point of sentencing, do you
12 recall any conversation with Federal prosecutors on the
13 subject of possible relief for Wiley Fairchild to be pardoned
14 or Act of Clemency?

15 A. I never heard the word pardon. I had gone -- I think it
16 was about along in that period of time that I had gone to
17 them with this so-called problem of contracting that Wiley
18 wanted to know if he could get some relief from a felony
19 conviction, because it was causing him this theoretical
20 problem with contracting even though they had already figured
21 out how to get around it.

22 Q. You mean contracting for the Federal Government?

23 A. I talked with Reid Weingarten about the problem. And
24 Reid -- I'd say at that point it was not an adversarial
25 relationship there. And Reid Weingarten said he didn't know

1 what, but he thought his office would be able to help him in
2 his relations with the Federal Government. The word "pardon"
3 I don't recall.

4 Q. Do you know whether Mr. Weingarten followed through on
5 that in any way?

6 A. I don't think he did. I'm not aware of it if he did.

7 Q. Were you involved in any way in preparing or assisting
8 Mr. Fairchild in preparation for his testimony in Judge
9 Nixon's trial?

10 A. Once he had entered his plea, no. I did not attend the
11 trial, I did not prepare him for the trial. I did not go
12 over his testimony prior to the trial.

13 Q. And before we leave the subject of Mr. Fairchild, have
14 you personally had any dispute with Mr. Fairchild since you
15 ceased representing him?

16 A. He still owes me part of my fee. And I'm suing him for
17 it.

18 Q. Is --

19 A. He still owes Mr. Arendall all of his fee. And Mr.
20 Arendall's has never sued for a fee and is not suing for a
21 fee in this case.

22 Q. Has the lawsuit been filed?

23 A. I've authorized someone to. I don't know.

24 Q. I want to switch now to Mr. Drew Fairchild. And you
25 referred to him in your answers.

1 A. Okay.

2 Q. Did there come a time when you represented Mr. Drew
3 Fairchild in connection with the drug charges against him?

4 A. Yes, there did.

5 Q. Did you have any discussion with Mr. Wiley Fairchild
6 concerning taking on Drew as a client?

7 A. As I recall it, Mr. Fairchild called me at my office in
8 Mobile. And I was aware of the background problems going on
9 concerning Drew. And he brought me up to date on them and
10 asked me if I would represent Drew. And I agreed to and set
11 up arrangements for Baltar and Drew to come to my office in
12 Mobile, which they did.

13 Q. All right. At that point did you initiate any contact
14 with the Federal prosecutors? Wait a second. I skipped
15 something here.

16 What precipitated Drew Fairchild coming -- your services
17 being sought for Drew Fairchild?

18 A. Sort of put it in order. We had entered into a plea
19 agreement with Wiley Fairchild. That did not become public
20 right away. Over a period of time, as time went by, certain
21 things developed where it did become fairly common knowledge
22 that Wiley was cooperating.

23 Shortly after that, something happened in Forrest County
24 Courthouse to cause this case to go -- Drew's case to go from
25 the inactive docket to the active docket and for the Judge to

1 say in an article, that I recall being in the Hattiesburg
2 paper, that he was not going to honor the plea agreement and
3 that Drew was going to get 15 years. This case hadn't even
4 been tried.

5 Q. Under Mississippi Law, the Judge would have the right to
6 accept or reject a plea agreement, wouldn't he?

7 A. No argument with that. I'm telling you what happened.

8 Q. All right.

9 A. I read in the paper --

10 Q. Do you recall that Drew's case had been passed to the
11 inactive files at that time?

12 A. That is my understanding. That is a Mississippi
13 practice that I'm personally not familiar with.

14 Q. Please continue.

15 A. My people were quite upset about reading about what was
16 going to happen in the dormant case in the paper and they
17 hired me.

18 Q. Did you, at that point when you were hired and you had
19 had a chance to talk to Drew Fairchild, initiate any contact
20 with the Federal Government?

21 A. Well, before I did that, I went to Mississippi to appear
22 in the case.

23 Q. In the State case?

24 A. In the State case. And on my initial appearance Judge
25 McKenzie would not let me appear because of the, quote, two

1 lawyer rule, end quote. And he said that under Mississippi
2 Law, that there was a law that a Defendant could only have
3 two lawyers and Drew already had two. Upon checking to see
4 what the two lawyer rule was, I found out it didn't prohibit
5 having more but I forget what the significance of it was.

6 Q. Does it refresh your recollection that there is a rule
7 that only two lawyers can speak on behalf of --

8 A. Can speak. Not represent, but can speak. I forgot the
9 significance of it. Then he asked me if I was familiar with
10 the -- after we got over the first thing. I think one of the
11 lawyers withdrew that had been of record. He then asked me
12 if I was familiar with the Code of Conduct for Mississippi
13 Attorneys. And, as I recall, I told him I thought in a
14 general way I was. I couldn't pass the Bar Exam on it, but
15 in a general way, I was. Then he started asking me some
16 questions that I later found out were trick questions that
17 had been developed during the big segregation battles in
18 Mississippi to disqualify out-of-state lawyers that were
19 coming in on segregation cases. So I got off to a rocky
20 start with Judge McKenzie.

21 Q. My question was: Did you initiate any contact with the
22 Federal prosecutors?

23 A. After I was frustrated at filing the appropriate
24 defenses in the State Court, I felt a railroad coming, and I
25 called up Reid and I asked him to please expeditiously, with

1 no waste, to indict my client.

2 Q. I'm sorry. I think you may have said you called up Drew
3 to make that request.

4 A. I didn't mean that. I mean Reid Weingarten. It's late
5 and I'm misspeaking.

6 Q. Me too.

7 A. I called Reid and I told him I was making a most unusual
8 request, I was asking him to indict my client in Federal
9 Court and to permit us to enter a plea of guilty to that
10 indictment. And that I wanted him to indict Drew on the load
11 of marijuana that had been siezed at the airport. And I told
12 him why I wanted him to do it.

13 Q. All right. Was there any discussion during that -- what
14 was Mr. Weingarten's reaction?

15 A. In the conversation he expressed himself as saying that
16 all of this was as a result of Wiley's cooperation and he was
17 concerned about it and he said he would do it and he did it.

18 Q. All right. Was there any discussion during that
19 conversation or any other conversation prior to the
20 indictment with Mr. Weingarten as to what the Government's
21 role would be in terms of a sentencing recommendation for
22 Drew Fairchild?

23 A. It was in a sense a blind plea. He had a right to
24 speak. I knew under the circumstances that he was
25 cooperating with me. That he wasn't out to hurt me. And I

1 did not have a plea bargaining as such. I didn't understand
2 that there was to be a recommendation of probation or
3 specific punishment or what have you. It was at least
4 implicit that Drew wasn't going to get hurt for going this
5 way.

6 Q. I'm asking what was explicit.

7 A. There was nothing more explicit than that he would do
8 what I asked him to do, make known what was about the case.
9 I remember that being expressed really.

10 Q. Do you recall telling me on the phone that Mr.
11 Weingarten had said that he would make no sentencing
12 recommendation for Mr. Drew Fairchild?

13 A. And he didn't as I recall.

14 Q. Okay. But let me ask my question. Is that what Mr.
15 Weingarten said?

16 A. Yeah.

17 Q. Let me just try to nail it down because it's late and
18 I'm not sure I'm hearing right.

19 A. Okay.

20 Q. Did Mr. Weingarten make the statement to you on that
21 phone call, "I will not make any sentencing recommendation"?

22 A. That's my recollection.

23 Q. For Drew Fairchild?

24 A. That's my recollection.

25 Q. So you had told him that Drew would plead guilty?

1 A. Yes.

2 Q. And he had told you, "I won't make any sentencing
3 recommendation"?

4 A. Yes.

5 Q. And did he make a sentencing recommendation at Drew's --

6 A. My recollection is he said good things about him at the
7 sentence but I don't recall him making a sentencing
8 recommendation. He made known what all he had done in the
9 way of cooperation.

10 Q. Did you have any hopes of using the Federal indictment
11 of Drew as a way to shut off the State prosecution?

12 A. Yes, I did.

13 Q. And on what was that based?

14 A. Most -- well, Mississippi has a statute and Alabama has
15 a similar statute that if you are found guilty or not guilty
16 in a Federal jurisdiction or in other state jurisdiction of
17 essentially the same narcotic offense, that you were charged
18 with in Mississippi in this case, that that conviction or
19 acquittal is a bar to the Mississippi prosecution.

20 Q. Did you discuss that with Mr. Weingarten?

21 A. I sure did. That's why I was asking for him to indict
22 him.

23 Q. Following the Federal indictment, did you undertake any
24 efforts to try to bring that statute into play to shut off
25 the State prosecution?

1 A. Yes, I did. I filed the motion -- I filed a motion to
2 enforce the plea agreement and I filed a motion to bar
3 prosecution because of the Federal conviction.

4 Q. What sentence did Drew receive on the Federal charges?

5 A. I believe he got six months split sentence with five
6 years probation and I want to say a fine, but I'm not sure
7 about the fine.

8 Q. Did he ultimately plead guilty to the State charges?

9 A. Yes, he did. After the motions I mentioned were denied.

10 Q. I don't want to go into all the details of what went on
11 in State Court but what was the ultimate disposition of the
12 sentencing in the State Court?

13 A. The State, I'd have to really look at a copy of the
14 sentence to tell you, but it was a no time sentence.

15 MR. STEWART: Give me a second. Thank you, Mr.
16 Hess. I have no further questions, Your Honor.

17 THE COURT: All right. Mr. Cole.

18 MR. COLE: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. COLE:

20 Q. Afternoon, Mr. Hess. We'll try and make this quick.
21 Mr. Hess, you were shown Exhibit 18.

22 A. Yes, sir, I have a copy.

23 Q. And you compared it to your notes. Those two are the
24 same, right?

25 A. Yes, sir.

1 Q. When did you get your set of the notes?

2 A. I would have gotten it early on in my representation --

3 MR. STEWART: Objection.

4 Q. When did you get the notes, Mr. Hess?

5 A. I would have gotten them early on in my representation.

6 I can't put a date on it.

7 MR. STEWART: Objection to would have, Your Honor.

8 A. Well, I did. Okay.

9 Q. Before the plea bargain?

10 A. That's my best recollection. These facts were extremely
11 confusing to me when I got into this case late. And this was
12 Baltar's work and I had John sort things out for me.

13 Q. Now, you came in to represent Wiley and you said he had
14 a number of other lawyers representing him at the time.

15 A. Yes.

16 Q. Could you tell us what was going on in the Wiley
17 Fairchild defense camp at that point?

18 A. There was almost total confusion.

19 Q. Could you describe for us that total confusion?

20 A. Well, you had Mr. Arendall over there from Mobile and
21 Mr. Arendall is a top drawer lawyer, an extremely competent
22 lawyer. The only criminal case I know of that he has handled
23 was a doctor's tax case back in the Sixties. They had done a
24 tremendous amount of research but it was on basic issues in
25 the case, you know, not important issues.

1 And you had Mr. Kepper in the case from Hattiesburg.

2 And for whatever reason, Mr. Arendall did not hold Mr. Kepper
3 in high esteem. I don't know whether Mr. Kepper held Mr.
4 Arendall in high esteem. I don't know what their feelings
5 were.

6 Q. What kind of advice were they giving Mr. Fairchild?

7 A. You had Mr. Gunn in the case. Mr. Gunn is an excellent
8 lawyer, but he'll be the first to tell you he's not a
9 criminal defense lawyer. He's a commercial and oil and gas
10 and corporate lawyer.

11 Q. What kind of advice were they giving Mr. Fairchild in
12 your opinion?

13 A. I felt that he had received bad advice prior to
14 appearing before the Grand Jury and that's why he was
15 indicted.

16 Q. What kind of bad advice?

17 A. In my judgment it was a good old boys advice, you go
18 forward, Wiley, and you hold the fence for Carroll and you
19 hold the fence for Judge Nixon, all of this will pass. We're
20 all here in Hattiesburg together and, by God, these outsiders
21 come and go. That was my reading of the case as I saw it.

22 MR. STEWART: Your Honor, I don't know if that was
23 a statement or if that was inference. I move to strike it.

24 THE COURT: I sustain the objection.

25 Q. When you got into the case the first thing that you

1 wanted as far as plea negotiations was immunity?

2 A. Yes.

3 Q. And you didn't get it?

4 A. No.

5 Q. Mr. Fairchild gave a proffer; is that right?

6 A. He had given a proffer before I got in the case.

7 Q. And it wasn't good enough to get him immunity; is that
8 right?

9 A. I don't know how to characterize it. It didn't get him
10 immunity.

11 Q. It's not unusual in the criminal law that for a
12 Defendant to get immunity, that's a pretty good deal for a
13 Defendant and he's going to have to come up with some pretty
14 credible, verifiable information?

15 MR. STEWART: Objection. He's not here as an
16 expert.

17 Q. Based on your experience, Mr. Hess.

18 THE COURT: I'll let him answer.

19 A. I think every deal stands on its own facts. Some cases
20 the Government crawled night and day to give you immunity and
21 other deals you couldn't get it under any circumstances. I
22 don't know of any generality.

23 Q. Now, I believe you stated during your direct testimony
24 that -- I think I even have it in quotes here. When you
25 first spoke to Mr. Fairchild and you learned that his story

1 basically was what he had testified to in the Grand Jury,
2 your reading of it didn't make sense; is that right?

3 A. It wasn't credible.

4 Q. Did you do anything about that with Mr. Fairchild?

5 A. I'm sure I expressed my opinions.

6 Q. And --

7 A. I don't remember exactly what I said, but I'm sure I
8 said that won't hold water or words to that effect.

9 Q. Did his story change?

10 A. Yeah.

11 Q. Did it change in regard to the Carroll Ingram approach?

12 A. It did.

13 Q. Did Reid Weingarten have anything to do with forcing
14 Wiley to change that story?

15 MR. STEWART: Objection to his knowledge.

16 THE COURT: To his knowledge --

17 Q. To your knowledge?

18 A. No. The first time I met Wiley I hadn't met Reid
19 Weingarten. Didn't know who he was.

20 Q. Now, the plea agreement was to recommend no time; is
21 that right?

22 A. Yes.

23 Q. I'd like to show you Respondent's Exhibits B, C, and D.
24 A letter to you from Reid Weingarten dated November 20, 1984,
25 copy of the plea agreement. This one isn't signed, but it's

1 a copy nonetheless. And a copy of a letter to Judge Carr.
2 Aside from that and possibly what's in the transcript at
3 sentencing, were there any other aspects to the plea
4 agreement other than what's contained in those documents?

5 A. No.

6 Q. Now, you talked about John Baltar approaching you and
7 asking if you'd find out from Mr. Weingarten if there was any
8 chance the Government would dismiss the case. You said you
9 talked to Mr. Weingarten and in just kind of an amusing sense
10 he said --

11 MR. STEWART: Objection.

12 MR. COLE: I think it's fair for him to
13 characterize the manner in which Mr. Weingarten spoke, Your
14 Honor.

15 MR. STEWART: I don't think he said --

16 THE COURT: Let's start over again. Rephrase the
17 question.

18 Q. Mr. Weingarten said, in whatever sense, Mr. Hess, that
19 if after his whole investigation was over he concluded in his
20 own mind that Wiley Fairchild had not committed a crime, he
21 would dismiss the charge; is that a fair statement?

22 A. Might.

23 Q. Might dismiss the charge. Not even a guarantee, right?

24 A. No.

25 Q. Didn't he also tell you, however, the man has virtually

1 confessed to a gratuity in the Grand Jury and we can't
2 overlook that?

3 A. I don't remember him saying that, but he had. It's in
4 the Grand Jury minutes.

5 Q. And when you told Mr. Fairchild about this, did you
6 explain to him, you've virtually confessed to a gratuity,
7 there's no way the Government is going to do this for you.

8 A. I'm sure I reported something on this to Mr. Fairchild
9 but I don't remember what it was.

10 Q. Did you tell him it was likely for this to happen?

11 MR. STEWART: Objection. I don't understand this.

12 THE COURT: I don't either.

13 Q. Did you tell him that this was a likelihood that the
14 case would be dropped?

15 A. If I expressed myself on likelihood, it would have been
16 that it was unlikely.

17 MR. STEWART: Move to strike. It's conditional.

18 THE COURT: Did you as best you recall?

19 A. To the best of my recollection I did, Judge, but it's
20 vague.

21 THE COURT: All right. I'll let it stand.

22 Q. Now, there's been an exhibit introduced, Exhibit 17,
23 which purports to be notes by John Baltar of a telephone
24 conversation with you on the 26th of November, 1984. Do you
25 see that?

1 A. Yes, sir.

2 Q. Have you ever seen those notes before?

3 MR. STEWART: Your Honor, just for the record, I
4 don't think the date is consistent. He said it was before
5 the 22nd. I'm not sure it's material.

6 MR. COLE: Fine.

7 Q. Possibly just before the 26th.

8 A. I believe I saw this on a break earlier today.

9 Q. Who showed it to you? Mr. Stewart?

10 A. Yes. And to the best of my recollection, that's the
11 first time I ever saw this.

12 Q. Looking at what's written there, do you have any
13 recollection of giving that information to John Baltar that
14 there's an informal agreement?

15 A. That's not my recollection of either what I was told or
16 what I reported back.

17 Q. And if, as Mr. Baltar says, you did report back, as best
18 your recollection would be that's not what you would have
19 said; is that right?

20 A. Yeah.

21 MR. STEWART: Objection.

22 THE COURT: I'll sustain as to form.

23 Q. Was this ever part of a plea agreement?

24 A. No.

25 Q. Was this ever told to Mr. Fairchild that it was part of

1 a plea agreement?

2 A. No.

3 Q. Was it ever told to Mr. Fairchild that this was being
4 done in return for his testimony?

5 A. No.

6 Q. Was it ever told to Mr. Fairchild that this would depend
7 on his testimony?

8 A. No.

9 MR. STEWART: Objection, Your Honor. I should have
10 been up quicker. Was it told to him by Mr. Hess or to Mr.
11 Hess's knowledge?

12 THE COURT: Well, I would assume that it's to Mr.
13 Hess's knowledge. As a lawyer I don't assume he's --

14 MR. STEWART: Thank you.

15 Q. Now, Mr. Hess, you testified that you did represent Drew
16 Fairchild.

17 A. Yes.

18 Q. And that happened when he started getting in trouble
19 with the State, probably 1985; is that right?

20 A. When this --

21 Q. When this case started getting active?

22 A. That would have been in 1985.

23 Q. And you worked out a plea agreement with him -- he had a
24 plea agreement actually with the State at that time; did he
25 not?

1 A. Actually he had a plea agreement with the Federal
2 Government and a plea agreement with the State. He had a
3 plea agreement with both of them.

4 Q. Federal plea agreement was with George Phillips; is that
5 right?

6 A. Yes. Back in '80, '81.

7 Q. Reid Weingarten had nothing to do with that?

8 A. No.

9 Q. And he had a State plea agreement.

10 A. Yes. With Bud Holmes when he was District Attorney of
11 Forrest County.

12 Q. Reid Weingarten had nothing to do with that.

13 A. No.

14 Q. And under that plea agreement he had with the State, he
15 wasn't going to be doing any time, right?

16 A. Right.

17 Q. Now, all of a sudden, Judge McKenzie starts giving you a
18 hard time.

19 A. First thing that happened is Judge McKenzie reactivated
20 the file, brought it back into the active files, whatever
21 that means in Mississippi practice. And, as I say, there was
22 an article in the paper about how he was going to get 15
23 years, which I thought was sort of unusual.

24 Q. And then you went to Court and Judge McKenzie treated
25 you in what you found to be a suspicious way; is that right?

1 A. Yes, sir.

2 Q. After this you went to Court again for the actual date
3 of Drew Fairchild's appearance to find out whether the Court
4 would accept the plea; is that right?

5 A. We went to Court several times. We went to Court on the
6 motions. I think both the motions were heard the same day,
7 but I'm not even sure about that without looking at the
8 documents.

9 Q. This is before the plea was withdrawn that I'm talking
10 about.

11 A. I had to withdraw the plea once he had --

12 Q. Right. I want to try to take this --

13 A. -- said he wasn't going to honor the plea agreement.

14 Q. I want to take it one step at a time or we're not going
15 to cover many steps here. You first went into Judge
16 McKenzie's Court and weren't treated very well.

17 A. Tried to make an initial appearance, yes.

18 Q. That didn't work, right?

19 A. We got the initial appearance made, it was just
20 fractious.

21 Q. Then you had to return to Court for the plea to be
22 either accepted or rejected by the Court; is that right?

23 A. I'd have to look at the docket sheet to tell you whether
24 we did it at the same time or did it at another time. I
25 don't really remember.

1 Q. Now, you asked Mr. Weingarten to write a letter on
2 behalf of Drew Fairchild; is that right?

3 A. I don't remember that I asked him to write it. I
4 remember he wrote it and I got a copy of it. Whether it was
5 written at my request or not, at this moment in time, I don't
6 recall but I may have.

7 Q. I'm showing you Respondent's Exhibit F. That's the
8 letter, isn't it?

9 A. Yes, it is.

10 Q. And you went to Court and the Judge wouldn't accept the
11 plea and he wouldn't accept the letter, would he?

12 A. I had forgotten that, but that's right. He wouldn't
13 accept the letter.

14 Q. And you came back from there and you started thinking,
15 My God, my client is being punished for cooperating with the
16 Federal Government.

17 A. That's what I thought.

18 Q. And you called Reid Weingarten at that point; is that
19 right?

20 A. I did.

21 Q. And you told him you thought your client was being
22 punished for cooperating with the Federal Government; is that
23 right?

24 A. I did.

25 Q. And you asked him this unusual thing, please indict my

1 client.

2 A. I did.

3 Q. There's no plea agreement.

4 A. No.

5 Q. And why did you want him to indict your client, Mr.
6 Hess?

7 A. I wanted to get convicted in Federal Court as a bar to
8 the State Court prosecution under the Mississippi Statute.

9 Q. Was there any reason you wanted him in Federal Court
10 instead of State Court?

11 A. I thought he would get a fair shake.

12 Q. Did you think he was going to get a fair shake in State
13 Court?

14 A. It was obvious to me he was not.

15 Q. Now, you said that Reid let you know one way or another
16 that he was not going to make a sentencing recommendation for
17 Drew.

18 A. Yes, sir.

19 Q. Now, lots of times in the criminal law we talk about
20 whether you're going to recommend specific time or whether
21 you're just not going to say anything at sentencing. Now,
22 are we talking about not recommending a specific amount of
23 time?

24 A. It's my understanding that he was not going to recommend
25 probation or he was not going to recommend a split sentence

1 or he was not going to recommend three years. We had no --
2 he was not going to recommend the sentence.

3 I had checked the Judge out, I knew the background on
4 the Judge. It was Judge Palka of Baton Rouge. He has an
5 outstanding reputation in his community. I felt comfortable
6 going before him with the facts as they were concerning
7 Drew. He had to come out better than he was going to come
8 out in front of Judge McKenzie. Also, if he got time, it
9 would be Federal time and not Parchman. And I had to think
10 that that was a plus, too.

11 Q. Now, at Drew's sentencing Mr. Weingarten did make
12 comments, didn't he?

13 A. He did.

14 Q. And he said that Drew was cooperating?

15 A. He did.

16 Q. He also said we can't just wink at what Drew did and let
17 it go by. Didn't he say that?

18 A. The transcript says that. I don't remember it.

19 Q. Would it refresh your recollection to look at it?

20 A. Whatever the transcript says. I'm sure it's accurate.

21 Q. He didn't say don't give Drew any time.

22 A. No.

23 Q. He talked even handedly; would that be a fair statement?

24 A. Yes.

25 Q. Drew's crime was serious but he had cooperated with the

1 Government and the Court should take that all into
2 consideration; is that fair?

3 A. Yes. I had seen that. But as I remember it, I felt he
4 was more than fair in his remarks and I felt they were
5 helpful for Drew.

6 Q. But they weren't all Drew's way. He said Drew had
7 committed a crime and the crime was a serious crime, didn't
8 he?

9 A. It's awful hard for me to comment on specific quotes.
10 Whatever it says in there, I'm sure it says it, and I adopt
11 it. I don't remember it word for word.

12 THE COURT: Let's move along, Mr. Cole.

13 Q. Now, did this plea agreement that was worked out, not a
14 plea agreement, this plea that went on with Drew, in your
15 call to Mr. Weingarten, the fact that he had agreed to indict
16 Drew, did it have anything to do with any agreements with
17 Wiley Fairchild?

18 A. No.

19 Q. To your knowledge, did Wiley Fairchild request this
20 happen?

21 A. I'm sure I kept Wiley informed. I mean, Drew is Wiley's
22 son. Wiley is the one that asked me to represent him. And
23 I'm sure that as things developed on Drew's case that Wiley
24 was kept informed. But do I have a specific recollection as
25 to specific conversations, I don't.

1 Q. This was never part of a plea agreement with Wiley
2 Fairchild?

3 A. No. That plea agreement had already been completed once
4 earlier.

5 Q. This was not a new promise that Wiley was trying to
6 exact from the Government in return for his testimony?

7 A. I asked to get him indicted. And I was only asking the
8 prosecutor to do what prosecutors are supposed to do anyway,
9 indict people who they have evidence that they committed a
10 crime. He not only had evidence, I was waiting to plead
11 guilty.

12 Q. Had nothing to do with Wiley Fairchild?

13 A. No.

14 Q. There was a State plea agreement; is that right? After
15 this?

16 A. Yes.

17 Q. You filed some motions, they didn't work; Drew still had
18 to stand trial at a certain point in the State Court; is that
19 right?

20 A. Yes.

21 Q. And a State plea was worked out?

22 A. Yes.

23 Q. Did the Federal Government have anything to do with
24 working out that State plea?

25 A. No. In fact, I tried to subpoena Reid and Jan Little to

1 one of the hearings on the motions and they dodged the
2 process the whole day. And then later told me they dodged
3 the process. And that if they had been served, they would
4 have gotten the Department to file a pleading to quash it.

5 Q. Now, aside from the subpoena, how about the negotiation
6 of the plea agreement with the State? Did Reid have any part
7 in that that you know of?

8 A. No.

9 Q. Did you ask him to encourage the State to accept the
10 plea agreement?

11 A. No.

12 Q. Did you ask him to intervene on your behalf with the
13 State and tell them, let him do all his time Federally and
14 we'll accept that and you ought to do that because the
15 Federal Government wants that? Did you ever ask Reid
16 Weingarten for that?

17 A. No.

18 Q. Did he ever do it to your knowledge?

19 A. No.

20 MR. COLE: Thank you, Mr. Hess.

21 RE-DIRECT EXAMINATION BY MR. STEWART:

22 Q. Mr. Hess, at the sentencing of Drew Fairchild, did you
23 feel like Mr. Weingarten had kept his word to you that he
24 would not make any sentencing recommendation?

25 A. I felt like he had done more than he had said he would

1 do.

2 Q. All right. Mr. Cole asked you some questions about
3 whether the indictment of Drew had anything to do with Wiley
4 Fairchild. And I would like to --

5 A. You're talking about the Federal indictment?

6 Q. Yes, sir. I'm sorry if I was unclear. Keep a close
7 watch on me. I'm not sure I'm asking the questions right.
8 Whether the Federal indictment of Drew Fairchild had any
9 relationship to Wiley Fairchild; do you remember that
10 question?

11 A. Yes, sir.

12 Q. Or that subject.

13 A. Yes.

14 Q. And your statement was that you didn't know of any such
15 connection.

16 A. Except they're father and son obviously.

17 Q. All right.

18 A. The father's case related to the handling of the son's
19 case so there was some intertwining but, no, I didn't know of
20 any direct connection.

21 Q. All right. I'd like to show you what's been marked as
22 Petitioner's Exhibit 5. It's a memorandum dated March 22,
23 1985, apparently signed by Jan Little and Reid Weingarten and
24 directed to the Chief of the Public Integrity Section of the
25 Criminal Division. It appears to relate to the --

1 MR. COLE: Objection, Your Honor. He's
2 characterizing it. This is not a document Mr. Hess had
3 anything to do with.

4 MR. STEWART: I'm going to attempt to refresh his
5 recollection.

6 MR. COLE: Why don't you ask him a question and get
7 him to say --

8 Q. Do you recall --

9 THE COURT: Okay. It's late but you're younger
10 than I am. I don't know why you guys should have any more
11 problem than I do so let's relax. Go ahead. Let's question
12 in the appropriate fashion, Mr. Stewart.

13 Q. Do you recall Mr. Weingarten ever stating to you that he
14 understood whether he ever stated to you that he understood
15 that Wiley Fairchild wanted Drew indicted in the Federal
16 Courts?

17 A. Do I recall him stating that to me?

18 Q. Yes, sir.

19 A. I don't. He may have, but I don't recall.

20 Q. All right. Did Mr. Weingarten ever state to you that he
21 was concerned that failure to indict Drew Fairchild in the
22 Federal Courts might jeopardize his investigation?

23 A. I don't think he ever said that to me.

24 Q. I'd like to show you Exhibit 5 and direct your attention
25 to the paragraph beginning at the bottom of the second page

1 and carrying over to the top of the third page and ask you if
2 that refreshes your recollection with respect to those two
3 matters.

4 MR. COLE: Your Honor, on one matter he has
5 testified that he has a recollection and the recollection is
6 no. On the other matter, it seems to me he's testified the
7 same way.

8 THE COURT: Well, let's see. We can hand him the
9 paper and save that time and I'll read it at the time Mr.
10 Hess is reading it.

11 Q. Bottom of two and top of three. Up through the No. 2.

12 THE COURT: Wait a minute now. You're beginning at
13 the bottom of Page 2?

14 MR. STEWART: Yes, sir.

15 THE COURT: And through the first paragraph on
16 three.

17 MR. STEWART: Well, now on Page 3 just to the end
18 of the second line.

19 THE COURT: Okay.

20 Q. Does that refresh your recollection on either of those
21 matters?

22 A. No, it doesn't.

23 Q. Finally, you mentioned, and, again, correct me if I'm
24 wrong, I heard you state that a letter that was sent to Glenn
25 White on behalf of Drew had been written at your request?

1 A. I don't remember whether it was at my request or not. I
2 know I got a copy of it. I may have requested it and I may
3 not have. I don't recall.

4 Q. Do you recall whether or not that letter was sent before
5 you even began representing Drew Fairchild?

6 A. It was sent on March 5 according to the date.

7 Q. Yes, sir.

8 A. And I don't remember without referring to my calendar
9 when I started representing Drew Fairchild. I gave you that
10 date the other day.

11 Q. The date that you gave me the other day when you met
12 with John Baltar and Drew Fairchild based on your calendar
13 according to my notes was March 14.

14 A. I'm sure that's what it will still show. It was after
15 March 5.

16 MR. STEWART: Thank you. I have no further
17 questions.

18 THE COURT: Anything else, Mr. Cole?

19 MR. COLE: Yes, Your Honor. Very brief.

20 RECROSS-EXAMINATION BY MR. COLE:

21 Q. Mr. Hess, you were present when Mr. Fairchild's plea was
22 withdrawn when Judge McKenzie would not accept the State
23 plea; is that correct?

24 A. Yes, I was.

25 Q. You represented him on that date.

1 A. I did.

2 Q. So whatever that date is, you would have been
3 representing him; is that right?

4 A. Let me back up. I would have to refer to the docket
5 sheet to answer that.

6 Q. All right.

7 MR. HOLLEMAN: Your Honor, I'm having trouble
8 hearing the witness.

9 THE COURT: Speak up so we can all hear you.

10 A. I would have to refer to the docket sheet of the State
11 Court case to answer that with any sort of certainty.

12 Q. When you filed motions to have Mr. Fairchild's State
13 case dismissed based on Federal prosecution, were those
14 public motions, publicly filed?

15 A. I believe they were. I don't recall them being sealed.

16 Q. Anybody could go see them?

17 A. Yeah.

18 MR. COLE: Thank you.

19 MR. STEWART: Nothing.

20 THE COURT: Okay. You may step down, Mr. Hess.
21 You're excused.

22 Put us in recess until 9:30 tomorrow morning, Mr.
23 Marshal, please.

24 (Recess.)

25 (August 30, 1988.)

1 THE COURT: Are you ready?

2 MR. STEWART: I just have one small item. I wanted
3 to offer what has been marked as Petitioner's Exhibit 20.
4 It's a document that was provided to us just yesterday by the
5 Government pursuant to the Court's order. It is the full
6 airtel transcommunication from the FBI to the --

7 THE COURT: Why don't we do this. Because I've got
8 a checklist. And when we finish introducing evidence I'll go
9 over and more clearly make sure that -- then I'll admit that
10 amongst some other things.

11 MR. STEWART: But it will be referred to in this
12 next examination.

13 THE COURT: Mr. Cole, did you have any objection?

14 MR. COLE: Yes, Your Honor. I have no objection
15 but I would offer as well what is now marked Respondent's
16 Exhibits S and T.

17 THE COURT: Are these the three --

18 MR. COLE: Yes. I think all three should go in.

19 THE COURT: I had intended to admit all of them and
20 you gentlemen can proceed on that premise.

21 MR. COLE: Thank you, Your Honor.

22 THE COURT: Let me just try to put the books in the
23 best place I can. Okay. Mr. Stewart or Mr. Holleman.

24 MR. HOLLEMAN: Your Honor please. I suppose there
25 are no witnesses in the room. We have a list here -- let's

1 go to the side bar.

2 (At the bench.)

3 MR. HOLLEMAN, JR: We've prepared a list of nine
4 assumptions to be given Mr. Fawer along with exhibits for his
5 testimony in an effort to shorten his testimony.

6 THE COURT: At my request.

7 MR. HOLLEMAN, JR: At the Judge's request. These
8 assumptions state the Petitioner's case as we believe from
9 the evidence although disputed by the Government. We would
10 ask that he be allowed to make these assumptions for the
11 purposes of his testimony and that the Court could state into
12 the record that, in the event that the Court decides that
13 Petitioner has not proven one or all or any combination of
14 the assumptions, the Court can then weigh Mr. Fawer's
15 testimony accordingly. That's the proposal.

16 THE COURT: Yeah. The purpose was to hopefully
17 shorten things because I have indicated that I don't deem
18 much of Fawer's testimony as listed in the pretrial order in
19 response to my pretrial order. I don't deem much of it to be
20 admissible. I do realize that the Petitioner has the burden
21 of proving materiality and accordingly Mr. Fawer is a lawyer
22 and should be allowed to testify as to what he would do with
23 certain evidence.

24 But, in any event as a result of that, I suggested we
25 try to get a more organized way to approach this and this is

1 the result.

2 Now, Mr. Cole, I should have let you speak first.

3 MR. COLE: Quite all right, Your Honor. There are
4 two small changes which we have made, I believe by agreement,
5 of all the parties. On Paragraph 4 in the last sentence it
6 says that -- currently it says: At the time Mr. Weingarten
7 promised Wiley Fairchild that he would make no
8 recommendation. Wiley Fairchild should be scratched out and
9 replaced with Barry Hess.

10 And in Paragraph 8, third line, the word "just" is to be
11 taken out. And otherwise I think it's been fairly stated.

12 The Government doesn't agree with the truth of these
13 allegations but for the purpose of this witness, they can ask
14 the questions.

15 THE COURT: You're not objecting to this being
16 posed in hypothetical form based upon the parties'
17 disagreement as to what the evidence proves, of course, and
18 the Government's not waiving its objections, its position
19 when it allows these questions to be posed on these nine
20 points and retains its position in that respect.

21 MR. COLE: Right. Thank you, Your Honor, that's
22 correct.

23 MR. HOLLEMAN: Do you think I might send this on
24 out to Mr. Fawer?

25 THE COURT: Yeah.

1 MR. HOLLEMAN, JR: Let's go off the record.

2 (Off the record.)

3 MR. HOLLEMAN: With reference to the time, Your
4 Honor. This is off the record.

5 (Off the record.)

6 MR. COLE: It hasn't been raised at all but just to
7 make everything nice and clean, I did have dinner last night
8 with several Government witnesses. They are my friends, as
9 well as my colleagues, as well as my witnesses. I'd just
10 like to say that the sequestration order was not violated in
11 any way and I wanted to state that.

12 THE COURT: They have no problem.

13 (Bench conference concluded.)

14 THE COURT: Where is Mr. Fawer?

15 MR. HOLLEMAN: He's in the witness room. We're
16 calling him now. I think, if Your Honor please, at this
17 point in time we would mark this as an exhibit. This is a
18 list of the assumptions that we conferred with the Court
19 about at the bench.

20 THE COURT: Yes, sir.

21 MR. HOLLEMAN: The next number is 21.

22 (Exhibit No. 21 marked.)

23 MR. HOLLEMAN: We would call Michael Fawer.

24 MICHAEL FAWER, having first been duly sworn, was examined and
25 testified as follows:

1 DIRECT EXAMINATION BY MR. HOLLEMAN:

2 Q. Would you state your name for the Court?

3 A. Michael S. Fawer.

4 Q. Where do you reside?

5 A. New Orleans, Louisiana.

6 Q. What is your business or profession?

7 A. I'm an attorney.

8 Q. And how long have you been practicing law?

9 A. Since 1960.

10 Q. What primarily is the field in which you work?

11 A. Criminal law.

12 Q. And how long have you been practicing in criminal law as
13 a specialist?

14 A. Virtually ever since I got out of law school, both as a
15 prosecutor for the first eight years with the Department of
16 Justice and the U.S. Attorney's Office in New York and then
17 the rest of the time in private practice primarily in
18 criminal work.

19 Q. Did there come a time, sir, when you were called upon to
20 represent Judge Walter L. Nixon?

21 A. Yes.

22 Q. And at what point in time did you become attorney for
23 Judge Nixon?

24 A. In August of 19 -- just a few weeks before the
25 indictment is when I originally spoke to Mr. Nixon about the

1 investigation and that would have been August of 1985. I
2 think that's right.

3 Q. Did you remain his attorney throughout the trial which
4 was held in the United States District Court in Hattiesburg?

5 A. Yes.

6 Q. And I'll ask you whether or not you were the chief trial
7 attorney and the trial attorney in that case.

8 A. I was. I was assisted by Herbert Lawson, and my
9 associate.

10 Q. Did you, Mr. Fawer, file in that case a motion for the
11 production of exculpatory evidence and disclosure of
12 impeaching evidence? And I hand you Exhibit 6.

13 A. Yes, I did.

14 Q. In your judgment that motion, and I shall not ask you to
15 read it, but did it cover sufficiently the law relating to
16 the disclosure or request for disclosure of such information?

17 A. I believe it did.

18 Q. And who was the presiding Judge at that trial?

19 A. Judge Meredith from St. Louis.

20 Q. I show you attached to that exhibit an order signed by
21 Judge Meredith and I ask you to note Paragraph 11, I believe
22 it is. Is it 11; is that correct?

23 A. Yes.

24 Q. I ask you to look at Paragraph 11 and tell me whether or
25 not in your opinion the Judge responded to that motion and

1 ordered such disclosure.

2 A. As far as I recall he did. Paragraph 11 was virtually a
3 total grant of our request with respect to such inducements
4 and promises.

5 Q. All right. You were satisfied with the motion and, of
6 course, with the action of the Court in that regard?

7 A. It didn't appear to be any need to ask for any
8 supplemental relief from the Court on that.

9 Q. All right. And did any such need ever arise? Was there
10 ever any necessity to file an additional motion?

11 A. Not on that specific point that I know of.

12 Q. Did you subsequent to that time, become aware of some
13 pleadings or some activity with reference to Drew Fairchild?

14 A. Sometime within a month or so before trial. I would say
15 -- trial was scheduled to begin in the latter part, I think
16 the third week in January of '86, and sometime between
17 mid-December and early January we had received information or
18 we had obtained it on our own concerning the Drew Fairchild
19 case having been -- there originally was a plea. I say
20 originally, there originally was a plea in Federal Court;
21 then it had gone over to the State Court. But then,
22 ultimately, there was a plea in the Federal Court, withdrawal
23 of the plea in the State Court, and a plea in the Federal
24 Court. And the dates were such that it appeared to us and
25 from some other information that there had to be some

1 involvement or suggested some involvement of the prosecutor
2 in working that out.

3 Q. I hand you Exhibit 7 for the Petitioner, a letter from
4 Mr. Reid Weingarten. And I ask if you received that letter
5 in early January of 1986 in response to your previous
6 discussion with Mr. Weingarten.

7 A. I had a meeting -- my best recollection is that I had a
8 meeting I think down in New Orleans in my office on January
9 3. It was a pre-arranged meeting with Weingarten and Jan
10 Little to discuss a variety of matters that needed to be
11 discussed. One of which was my feeling as I stated in the
12 letter that I had an understanding that the Federal
13 Government had made some sort of a deal, quote unquote, with
14 Drew Fairchild prior to his Federal indictment.

15 Q. That letter then -- was that letter in response to that
16 conference with Mr. Weingarten?

17 A. Correct.

18 Q. And I will not bother to ask you the contents of the
19 letter because it is in evidence.

20 Did you at that time or did you ever receive a copy of
21 Petitioner's Exhibit 5, which I now present to you, the
22 memoranda.

23 A. No. First time I saw this was, I believe, within the
24 last 10 days, maybe 15 days.

25 Q. And I shall not ask you to read the contents except to

1 look at it and say does it deal with the matter about which I
2 have just asked you about?

3 A. It's an internal memoranda by Reid Weingarten and Jan
4 Little to superiors requesting permission to prosecute Drew
5 Fairchild on the Federal level instead of the State level,
6 expanding on their reasons for doing so.

7 Q. I want to ask you about one other matter. Exhibit 11 of
8 the Petitioner, which I now hand you, do you recognize that
9 exhibit as being a transcript of a tape taken by Mr. Jarvis
10 at a time when he was apparently working for the FBI? And it
11 purports to be and is, I take it, admitted as a transcript of
12 a conversation between he and Mr. Wiley Fairchild taken at
13 the early -- in the early stages of the investigation. Do
14 you recognize that?

15 A. Yeah. It's actually two tapes. I think it's two
16 tapes. It's 16-A and 17-A. One being the first tape and
17 then the call back. I think that's what it is.

18 Q. It is. In order to save time, the first tape is his
19 visit to Wiley Fairchild and then he goes back I think with
20 the FBI and makes a telephone call.

21 A. Both of which were taped.

22 Q. Were you familiar with that?

23 A. I had that.

24 Q. You had that at the time of the trial?

25 A. Right.

1 Q. Now then, just touching on one or two quick things to
2 lead into my question. Exhibit 10 of the Petitioner's
3 Exhibit.

4 MR. HOLLEMAN: Which is, Your Honor, the list of
5 the jury notes and the hours of deliberations and so forth.

6 Q. You're familiar with the length of time within which the
7 jury deliberated the case and so forth?

8 A. I was here. In the sense of here, I was in Hattiesburg
9 and I know it went from sometime on a Saturday through Sunday
10 night.

11 Q. Now, Mr. Fawer, with that in mind, I want to hand you
12 Court's Exhibit 21, which I have handed you a copy of before
13 you came in here. You have a copy in front of you.

14 A. I looked at it for a minute or two before I came on the
15 stand.

16 Q. All right. Now that exhibit consists of a list of nine
17 matters which I'll ask you to assume for the purposes of my
18 questions that follow without repeating those assumptions as
19 we would ordinarily do in a hypothetical. We've marked this
20 into evidence. Those assumptions are correct as to those
21 instances relating to what happened between Mr. Fairchild,
22 Mr. Weingarten, Mr. Baltar, and so forth. You understand the
23 nature of those assumptions.

24 A. As I understand it, these are capsulized descriptions of
25 material or testimony that I did not know about at the time

1 of the trial.

2 Q. That was my next question. Having reviewed that list of
3 nine items, beginning with the informal agreement to dismiss
4 the gratuity and extending down through the last item on the
5 list, the FBI communication containing the statement by Mr.
6 Fairchild, I'll ask you whether or not you had any access to
7 those nine items which I'm asking you to assume now have been
8 proven in evidence?

9 A. The answer is no. Obviously, of course, I had access to
10 one of the matters that was alluded to in six, the letter of
11 January 7.

12 Q. The letter of January 7.

13 A. The letter of Reid Weingarten to me. I did not have the
14 internal memorandum that's also alluded to which you just
15 showed me which is -- I don't know what Exhibit Number -- but
16 Exhibit 5 in this proceeding. But I did have, of course, the
17 letter that he had sent me dated January 7 which is Exhibit
18 7.

19 Q. All right.

20 A. Other than that it's -- my best recollection is that I
21 did not have access to nor was I aware of the other material.

22 Q. Let me ask you this question: Whose testimony, as a
23 witness in this case, would those assumptions bear on so far
24 as you as a practitioner if you had had them at your command
25 during the trial of this case?

1 A. They would have impacted primarily on the manner in
2 which I would have examined Wiley Fairchild.

3 Q. It was --

4 A. Excuse me. It's not to say that it may not have had
5 some impact on the examination of Drew Fairchild or Bud
6 Holmes, but the core of all of this material would have
7 impacted on the examination and the defense insofar as Wiley
8 Fairchild's testimony is concerned.

9 Q. Very briefly, in your opinion as an attorney and as a
10 trial attorney in this case, was Mr. Fairchild an important
11 witness; and if he was an important witness, my second part
12 of my question, how would this have borne -- what impact
13 would this have had on this testimony?

14 A. The answer from my judgment, he was a very, very
15 significant witness.

16 Q. Why?

17 A. To explain, the key to Counts III and IV, the two counts
18 on which Judge Nixon was ultimately found guilty, the key to
19 it was the dating of the phone call from the farm as to
20 whether or not it was before or after the passing of the case
21 to the files. The passing of the case to the files was on
22 December 23, '82. When I say that was the crux of the case
23 not just because I'm saying it, Reid Weingarten adopted that
24 rationale in his summation. Bud Holmes, in my
25 cross-examination of him, conceded that he in effect was

1 lying if in fact the phone call occurred after the case
2 passed to the files. The case was ultimately tried to the
3 jury on those two issues, those two counts was tried to the
4 jury on that issue. Bud Holmes, obviously since those two
5 counts related to what he said and what Judge Nixon said to
6 him at the farm, obviously Bud Holmes was crucial to a
7 conviction on those counts. However, Bud Holmes, from my
8 judgment for the most part was, to be generous, a flawed
9 witness. He could not make the Government's case by itself.
10 For one reason aside from his credibility being seriously
11 impaired, you had the testimony of Judge Nixon which for the
12 most part just set, at worst, set the testimony of those two
13 men off diametrically on what occurred at the farm that day
14 and also as to the date. What you needed there had to be
15 something else for a jury to hook on to, to be able to hang
16 its hat on, to say that Bud Holmes was being -- that he was
17 at least credible with respect to the passing of the case to
18 the files flowing from the conversation at the farm. That
19 testimony will have to come from Wiley Fairchild. Wiley
20 Fairchild, on the one hand, the problem with Wiley Fairchild
21 is Wiley Fairchild for the most part although the Government
22 put him on, I never needed to impeach him. What I was doing,
23 I made him my witness on Counts I and II. He acquitted Judge
24 Nixon virtually on his own. There was some help from Carroll
25 Ingram, but I knew we'd have that.

1 Q. I want to shorten that a little bit because I'm limited
2 on time. I appreciate your -- I understand that. But Wiley
3 Fairchild then, as I understand your testimony, in your
4 opinion, became the difference on that point.

5 A. Yes, he became the difference but I can't answer that
6 without explaining why he was the difference.

7 Q. Okay. Very briefly do that.

8 THE COURT: A sentence or two, Mr. Fawer, because
9 I'm pretty familiar. I've read the briefs, I've read your
10 statements. Give me credit for having some knowledge.

11 A. Sure, Judge. I was trying to be as brief as possible.
12 That the key point was Wiley Fairchild. The way I developed
13 Wiley Fairchild was to make him my witness for all practical
14 purposes on Counts I and II. He became my witness even on
15 the dating because everything he said agreed with the logic
16 that it occurred after the passing of the case to the files.
17 The hang up came when he insisted, despite his admission,
18 that it happened in January -- after January of '83. And he
19 said that on several occasions in a very voluntary way on the
20 stand. He then -- when I then asked the ultimate question so
21 therefore it had to have occurred after it passed to the
22 files, he flipped back and insisted without any rational
23 basis that it was before.

24 Q. All right.

25 A. I had -- if I just might. I had no -- what I had then

1 was simply the illogic of that position to argue to the
2 jury. What I didn't have was any means to show a motive for
3 Wiley Fairchild to lie on that issue. I had -- all I could
4 argue was the illogic and, of course, what happened on
5 summation is Reid Weingarten was able to argue what motive
6 did this man have to lie and I cannot respond to that except,
7 you know, the milder facts.

8 Q. I think that covers it. I want to move along here
9 because the Court is being generous to us on this point.
10 And, as the Court has pointed out, it is familiar with the
11 record. We all are.

12 You did have the Jarvis tape which contradicted that.

13 A. Let me just --

14 Q. All right.

15 A. Okay. I think I can make this real fast if His Honor
16 will just bear with me two minutes.

17 Q. Please do.

18 A. What I didn't have was -- having made him my witness
19 from my point of view is having been -- I've done everything
20 I want at that point when he will not come my way on the
21 dating, I needed something to impeach him. What I didn't
22 have is the understanding that the Government would consider
23 dismissal of the case. I didn't know that, which is point 1
24 here. I did not know that their potential pardon -- their
25 cooperation on pardon was held out.

1 MR. COLE: Your Honor, I think we stipulated that
2 we didn't know these things.

3 THE COURT: This is a repeat of which we've already
4 gone over, Mr. Fawer. And I've had enough on it.

5 A. With respect --

6 THE COURT: Mr. Fawer.

7 A. Sorry.

8 Q. We understand what you're saying and these are
9 stipulated as an exhibit so you don't have to tell us what
10 you did not know. We know that. The point is that you did
11 not have this information with which to impeach Mr. Fairchild
12 at that time.

13 A. That's correct. Just on the Jarvis thing because it's
14 not clear -- the fact that Mr. Weingarten -- apparently I am
15 to assume -- instructed Wiley Fairchild to mislead or to
16 state that if I asked about the Jarvis conversation he,
17 Fairchild, was to say that he was in effect lying, or telling
18 Jarvis what he wanted to hear why that was very important.
19 It blunted what was on the tape. Namely that Drew -- that on
20 the tape in a very candid moment Fairchild said that the
21 passing to the files came as a result of an arrangement
22 between Porter and Holmes. Not as a result of anything he
23 had ever asked.

24 Q. And so that was in your opinion a very important --
25 would have been a very important part of impeachment material

1 in your hands.

2 A. I had it but it was blunted by virtue of what his
3 response was.

4 Q. All right. Now then with reference to Mr. Wiley
5 Fairchild. You had no knowledge of any of the matters which
6 are nine here, including the script which you -- I don't know
7 whether you've seen or not, but I'll not take the time to
8 show it to you, but you know what I'm referring to as the
9 script.

10 A. I do. I had no knowledge of that.

11 Q. And would these --

12 THE COURT: Doesn't surprise you to know that a
13 lawyer might go over questions with a prospective witness?

14 A. Not at all.

15 THE COURT: That doesn't shock you?

16 A. No, not at all. I did it all the time. I did it as a
17 prosecutor. What does shock me, Your Honor, and what I think
18 I am --

19 THE COURT: Wait a minute. We're getting to what
20 you think and what you think isn't too important.

21 A. That's right. My answer is it doesn't shock me that an
22 attorney would have gone over the questions and answers.

23 Q. Now, Mr. Fairchild when he testified on the stand, Mr.
24 Fawer, I think it is shown by this assumption and by the
25 evidence here that he had a copy of this script in his

1 pocket. Have you ever known anyone to do that with a
2 witness?

3 A. I've not known -- I don't know --

4 THE COURT: You've never known a witness who had in
5 his pocket questions and answers? Let's not say that he was
6 told to do so but you never heard of a witness carrying notes
7 and having them in his pocket? I guess I've seen that happen
8 in my maybe too many years, more than five times, more than
9 ten times, where they reach in and the lawyer wants it. You
10 guys never see that?

11 A. Excuse me, Judge. The answer is yes but also my
12 understanding -- my recollection is I had it -- just trying
13 to recall in my own mind away from this case. Under the
14 rules of evidence, if somebody has used a document to refresh
15 your recollection, I have a right to examine him on it during
16 the trial. Therefore, in the case I know of, there were two
17 instances where I found out that there was such a script,
18 such a Q and A that the person had on him or had looked at it
19 and counsel and I asked the Court and the Court automatically
20 granted me access.

21 THE COURT: Sure.

22 A. So I could cross-examine him on the nature of those
23 responses.

24 THE COURT: I don't think we have evidence that
25 Wiley had this out in his hand and was reading from it at the

1 time.

2 A. He doesn't have to. As I understand the rules, so long
3 as he has used it to prepare himself for trial, I have a
4 right to see it.

5 THE COURT: Now do you -- okay. Go ahead.

6 MR. HOLLEMAN: I see Your Honor's point.

7 THE COURT: There's a lot of point but let's get
8 moving.

9 MR. HOLLEMAN: Yes, sir. More in the nature of
10 argument, I would like to have the opportunity to have him
11 pull it out of his pocket if I knew he had it.

12 THE COURT: I suspect that if he peeped at it and I
13 was on the bench and I saw him, I would tell him to turn it
14 over to you.

15 MR. HOLLEMAN: I know you would.

16 Q. Mr. Fairchild then was a crucial and important witness
17 as you are stating and you did not have access to this
18 information with which to impeach him.

19 A. No, I did not.

20 Q. Did this lack of information, the fact that you were not
21 furnished the information or the lack of information now
22 contained in that list of assumptions, Mr. Fawer, effect your
23 ability to defend Judge Nixon in the trial, in your opinion?

24 A. I believe it did.

25 MR. HOLLEMAN: No further questions.

1 THE COURT: Mr. Cole.

2 CROSS-EXAMINATION BY MR. COLE:

3 Q. Morning, Mr. Fawer.

4 A. Morning.

5 Q. Mr. Fawer, prior to trial you had that January 7, 1986,
6 letter from Reid Weingarten; did you not?

7 A. I did.

8 Q. And you received it before trial?

9 A. Absolutely.

10 Q. And you knew that Drew, under that letter, had been
11 cooperating since 1984; is that right?

12 A. Yes.

13 Q. You knew that there were several continuances at Drew's
14 request because of his cooperation in his State case; is that
15 right?

16 A. Correct. His back injury and for some other reasons.

17 Q. You knew that Drew had been scheduled for sentencing on
18 the 8th of March, 1985; is that correct?

19 A. Yes.

20 Q. And you knew that the Government had written a letter to
21 Glenn White on the 5th of March, 1985, concerning Drew's
22 cooperation?

23 A. Right.

24 Q. You got a copy of that letter, right?

25 A. Absolutely.

1 Q. And you knew that Drew's plea had been withdrawn on the
2 8th of March, 1985, right?

3 A. Right.

4 Q. Because the Judge wouldn't accept the plea.

5 A. Right. Upon his counsel's motion, I believe.

6 Q. And you knew that the Government had been contacted by
7 Barry Hess and Barry Hess had asked the Federal Government to
8 indict Drew Federally; is that right?

9 A. I don't know that I knew it was Barry Hess.

10 Q. You knew Drew's counsel.

11 A. Well, what I didn't know -- the reason I point that out
12 is the name Barry Hess I associate with Wiley Fairchild, not
13 with Drew Fairchild. And the letter itself makes clear --
14 and I'm not saying that I did not have access to that, I
15 don't believe that I knew that it was Barry Hess who had
16 contacted him at that point about indicting him.

17 THE COURT: Excuse me. What letter, the letter
18 from Weingarten?

19 A. January 7th, Your Honor. And at the bottom it says
20 shortly thereafter Fairchild's attorney contacted -- it
21 wasn't -- it didn't have any meaning to me to know who that
22 attorney was. Porter was dead. It was some attorney. I had
23 no reason to doubt that. I don't know that I knew it was
24 Barry Hess because Hess, as I say --

25 Q. I understand that. You've answered that. You knew an

1 attorney for Drew Fairchild had asked the Federal Government
2 to indict him.

3 A. Right.

4 Q. And you knew there was a plea agreement or there was a
5 plea by Drew in Federal Court?

6 A. Ultimately, yes.

7 Q. And that was a public record?

8 A. Sure.

9 Q. You could see the transcript, right? Did you get ahold
10 of that transcript?

11 A. I believe I did. I believe there was a transcript that
12 I had. If you show it to me, I might be able to identify it.

13 Q. Did you know that Drew was sentenced in Federal Court?

14 A. Sure.

15 Q. Did you know there was a public transcript of that?

16 A. Sure.

17 Q. Did you get a copy?

18 A. I think I did.

19 Q. Did you know that Drew entered a State plea?

20 A. Yeah.

21 Q. After his Federal plea?

22 A. I knew there was some question as to how that came about
23 because McKenzie, Judge McKenzie, initially had refused to
24 honor the plea agreement. And it was that refusal which
25 concerned the Fairchilds and led to the events that you've

1 just described. There then was some understanding, I gather,
2 with McKenzie to allow a plea which would be -- excuse me --
3 impose a sentence which would be served by whatever he got in
4 the Federal Court.

5 Now, my recollection is that the State sentence occurred
6 ahead of the Federal sentence so that -- I may be wrong about
7 it but I think the State sentence occurred first but it
8 really was then conditioned upon whatever the Federal
9 sentence was in July.

10 Q. And in fact there was a letter dated July 8, 1985, by
11 Wallace Gunn to, I believe, Glenn White, the District
12 Attorney, concerning the arrangement in the State case; is
13 that right?

14 A. I think you're right.

15 Q. That was made part of the Federal public record as a
16 matter of fact; was it not?

17 A. It may well have. I'm fairly confident I had access to
18 that. I had access to the whole -- I had a folder that had
19 -- everything public on the Drew Fairchild file, I had.

20 Q. Okay.

21 A. That was public.

22 THE COURT: Didn't the State sentence occur after
23 the Federal sentence?

24 A. No.

25 MR. COLE: I believe it either occurred after or

1 else the plea agreement called for -- the plea agreement was
2 consummated before that set the amount of time.

3 A. Something was slightly unusual, Judge, because I know
4 that it was sort of confusing because the State sentence, my
5 recollection of the sentence that it was a few days or a week
6 in advance so that the -- but remember I'm looking at it
7 after the fact.

8 MR. HOLLEMAN, JR: Judge, for the Court, the trial
9 record would show that the actual sentence occurred before,
10 just a few days before, the Federal sentence. And that was,
11 I believe, in the trial record before the Court.

12 THE COURT: Thanks.

13 Q. Mr. Fawer, you had received Wiley Fairchild's Grand Jury
14 transcripts before trial; did you not?

15 A. A week before trial we received it.

16 Q. And in those Grand Jury transcripts it disclosed that
17 Wiley Fairchild indeed had an interest in what happened to
18 his son Drew with his criminal problems; did it not?

19 A. In the sense that he was interested in his son Drew,
20 yeah.

21 Q. So you knew that before trial?

22 A. Sure.

23 Q. During the course of trial, Mr. Fawer, I believe you
24 testified here today that the key from all of these
25 hypotheticals stated in Exhibit 21 was that it would have

1 affected Wiley Fairchild's credibility in that Wiley

2 Fairchild was key to the case; is that right?

3 A. I said -- no, I didn't say that precisely. What I said,
4 the key to Counts III and IV was the dating as Bud Holmes had
5 dated it. If Wiley Fairchild under cuts Bud Holmes on that,
6 you lose III and IV by Reid Weingarten's own statement to the
7 jury.

8 Q. Carroll Ingram also testified about the dating; did he
9 not?

10 A. Carroll Ingram -- you could not, as a prosecutor,
11 believe that you could hang your hat --

12 Q. Mr. Fawer, I'm only asking --

13 A. The answer is yes. He testified to the dating in the
14 sense that he said he believed it was before; he could be off
15 by upward of two months.

16 Q. Now, at trial, you were not allowed to impeach, shall we
17 say, the credibility of the Government case, were you,
18 generally, aside from witness credibility?

19 A. You said I was not allowed?

20 Q. Right. That would not have been a proper defense tactic
21 at this trial.

22 A. I'm not sure I understand your question.

23 Q. You wouldn't have been allowed to just attack the
24 Government's method of the prosecution generally.

25 A. Why not?

1 Q. I'm asking you. Was it your impression?

2 A. You asked me whether I would have been allowed. I'm
3 saying I don't know why I wouldn't have been.

4 Q. Wasn't there a jury instruction to that effect?

5 A. There may well have been but that doesn't mean -- as far
6 as I know one of the things I did, as I recall, is bring out
7 without -- perhaps with opposition from Mr. Weingarten but
8 with the Court's approval what I believed was an outrageous
9 allowance of Wiley Fairchild to spew into the Grand Jury the
10 whole Preacher Shows incident which was nothing more from my
11 judgment -- again, I'm the defense attorney. I'm not trying
12 to argue the case here. But from a defense attorney's point
13 of view, I think that what you had was a prosecutor seeking
14 to poison the Grand Jury. What I was doing was demonstrating
15 just what you're talking about.

16 Q. But you were only allowed to do that as far as it
17 effected the credibility of a witness; isn't that right?

18 A. I think the manner in which the Government tries the
19 case, insofar as it impacts on the credibility of witnesses
20 and the overreaching of witnesses, is an allowable defense
21 and that's what I used in part.

22 Q. Only as it bears on the credibility of the witnesses.

23 A. When you say only, primarily it bears on credibility.

24 Q. And the Court instructed the jury that they could only
25 consider any Government misconduct in regard to how it would

1 affect the credibility of a witness.

2 A. If you show me the charge. If it was given, I accept
3 it.

4 Q. Page 2,100 of the trial transcript, this paragraph in
5 the middle starting at Line 8.

6 A. I'm just reading before and after that; is that all
7 right?

8 Q. Certainly.

9 A. That charge was given. It basically is saying that
10 prosecutorial misconduct is a legal issue except insofar as
11 it affects credibility.

12 Q. You agree with that.

13 A. Do I agree with it? I agree that that's what the
14 Court's hold.

15 Q. And you didn't appeal that. Or that wasn't an appellate
16 issue.

17 A. I didn't handle the appeal.

18 Q. It wasn't a post-trial issue, was it?

19 A. No.

20 Q. Didn't object to the instruction?

21 A. I doubt that. I know that we objected. If we did, it
22 would have been noted in the record.

23 Q. So basically what we're down to on all of this
24 information is how it would have affected Wiley Fairchild's
25 credibility in trial; is that right? And his impact on the

1 verdict?

2 A. We're now down to what affecting?

3 Q. These things in the hypothetical.

4 A. Yes.

5 Q. You filed a post-trial brief in the case?

6 A. I think we did, sure.

7 Q. You and your partner?

8 A. Right.

9 Q. You signed it?

10 A. I'm sure I did. Sometimes he signs my signature, but if

11 he does, it's with my approval.

12 Q. Everything you said in it was accurate?

13 A. I would assume so.

14 Q. I'd like to show you your motion for a new trial on

15 Counts III and IV of the indictment. I'll show you that. Is

16 that your signature?

17 A. It is.

18 Q. On Page 1, Paragraph 2, as the grounds for your motion

19 for new trial. Would you read that, Mr. Fawer? Read it out

20 loud, please.

21 A. There can be no doubt that the axis around which

22 Counts III and IV resolve is the phone call incident. This

23 incident is, of course, shorthand for three discreet events;

24 these being, one, a meeting between Wiley Fairchild and Judge

25 Nixon --

1 Q. Excuse me. I said Paragraph 2.

2 A. Oh, I beg your pardon.

3 Q. Read it out loud, please.

4 A. It is clear from a reading of the indictment taken in
5 conjunction with the trial record conviction on Counts III
6 and IV was predicated solely on the testimony of Bud Holmes
7 with respect to what he and Judge Nixon said to each other on
8 the night of the phone call incident. The heart of Holmes'
9 testimony was that he volunteered to Judge Nixon that he
10 would pass the Drew Fairchild case to the file. That he then
11 promised to do so in the phone call to Wiley Fairchild. That
12 he made good on his promise seven months later in December of
13 '82.

14 Q. I think that's sufficient, Mr. Fawer.

15 A. No, it's not. May I finish reading?

16 THE COURT: Yeah.

17 Q. Sure.

18 A. Holmes dated the phone call incident as occurring in the
19 spring of '82, specifically Friday, May 14, well before the
20 case was passed to the files. Judge Nixon gave a very
21 different version of the meeting which he testified occurred
22 in March, '83, after the case was passed to the file and then
23 reactivated on January 26, '83. Obviously if the phone call
24 incident occurred in '83 and not in '82 then Bud Holmes was
25 lying with respect to the single most important aspect of the

1 conversation between he and Judge Nixon.

2 Q. So the first statement there is that Counts III and IV,
3 conviction was based solely on the testimony of Bud Holmes;
4 does it say that there?

5 A. That's correct.

6 Q. Let's talk about --

7 A. The point is, as I said when I testified on direct,
8 without Bud Holmes there can be no conviction on III and IV.
9 He is at the core. But his testimony from my perspective as
10 defense attorney, not as an objective observer, although I
11 think it's an objective statement, without something to nail
12 down the dating, the Government would not have been able to
13 convince the jury. That's my perspective.

14 And what Mr. Weingarten came back to again and again was
15 Wiley Fairchild, wrapping his arms around Wiley Fairchild
16 every way he could, particularly on rebuttal, to make it
17 clear that Wiley had no motive to lie on the dating issue.
18 That's what the rebuttal was about.

19 Q. Mr. Fawer, your post-trial motion says that the
20 convictions on Count III and IV were based -- and I use your
21 words, sir -- solely on the testimony of Bud Holmes; does it
22 not?

23 A. It says that --

24 Q. Does it say that?

25 A. It says that it is clear, predicated solely upon the

1 testimony.

2 Q. Okay.

3 A. That's fine. That is exactly what I said in a motion.

4 Q. Let's talk about the significance of the dating. An
5 appellate file was filed in this case?

6 A. As far as I know, yes.

7 Q. By a Mr. Ben Telladono?

8 A. Yes.

9 Q. A good lawyer?

10 A. Beg your pardon?

11 Q. Is he a good lawyer?

12 A. I'm under oath.

13 MR. STEWART: Objection. I don't know how he can
14 impeach him on the work of another lawyer.

15 THE COURT: Is he in your office?

16 A. No.

17 THE COURT: Who is he?

18 A. He's an attorney who has no criminal experience. I hate
19 to -- you asked the question, I'm telling you. I do not
20 believe the brief was an adequate brief. There were some
21 very serious reservations about the brief and the way it was
22 phrased, the way it dealt with this case. That's my
23 judgment, I'm sorry.

24 Q. And in the brief on Page 33, does it not -- did you read
25 the brief? You did, didn't you?

1 A. As far as I could.

2 Q. And on Page 33 it says, and I quote: We think the date
3 of the phone call is of no significance; isn't that right?

4 A. Sir, I am not responsible. I had -- I made
5 recommendations to who should handle that brief. There was a
6 brief prepared by the individual who I asked to prepare it
7 and the dating was of utmost significance. It is not my
8 responsibility that somebody else chose not to make it an
9 issue on appeal. I felt it was a serious, serious error. I
10 tried the case on the significance of the dating. I am not
11 responsible nor is the issue now what another attorney chose
12 to argue to the Court of Appeals. I did not think the
13 Bronston issue was that good to be argued that --

14 THE COURT: Okay. I'll get the Bronston issue.
15 Next question, Mr. Cole.

16 Q. Mr. Fawer, we could look at your post-trial motion and
17 we can find out what your views were right after trial as to
18 the significance of Mr. Fairchild's testimony in this case;
19 is that right?

20 A. I've given my -- under oath in this courtroom, I have
21 told you as an officer of the Court what my beliefs were as
22 to what I had, what I didn't have, and what I was entitled to
23 have in my possession in order to cross-examine Wiley
24 Fairchild particularly --

25 Q. That's not my question, sir.

1 A. Excuse me. You asked me a question, I'm trying to
2 explain it.

3 Q. I am asking you a question which is: The significance
4 of Wiley Fairchild's testimony to the verdict, not what
5 information you had about it.

6 A. I will be happy to allow the Court to make a judgment as
7 to the significance of Wiley. You and I could talk about
8 it. You know and I know without Wiley Fairchild we would not
9 be here today, Mr. Cole.

10 Q. And you would have put that in your post-trial motion;
11 is that right, sir?

12 A. I argued a post-trial motion as best I could at that
13 time. I made the best arguments I could. From my
14 perspective, I was lodging an attack on Bud Holmes. I was
15 trying to show the Judge how flawed, how inadequate, how
16 insufficient Bud Holmes was. If I convinced Judge Meredith
17 that Bud Holmes is not believable as a matter of law, we
18 don't have to go anyplace else. No place else because
19 without him you don't have the statements even that would be
20 necessary to convict. But there is no question in my mind --
21 I chose that tact on a motion for new trial.

22 THE COURT: Okay. Judge Meredith, I gather, didn't
23 agree with you.

24 A. He said denied.

25 MR. COLE: Thank you, Mr. Fawer.

1 THE COURT: Mr. Holleman.

2 RE-DIRECT EXAMINATION BY MR. HOLLEMAN:

3 Q. Of course, appellate briefs are based upon what is in
4 the record, correct?

5 A. I hope so.

6 Q. None of the matters which have been submitted to you and
7 asked you to assume this morning were in this record.

8 A. None of them.

9 Q. Therefore, they were not a part of the brief or a part
10 of the conversation of whoever prepared the brief, were they?

11 A. Right.

12 MR. HOLLEMAN: No further questions.

13 MR. COLE: I have nothing, Your Honor.

14 THE COURT: Mr. Fawer, you may step down. You're
15 excused.

16 A. Thank you.

17 MR. COLE: Your Honor, the Government would
18 specifically like to highlight the motion for new trial in
19 the record for the Court's attention.

20 THE COURT: Let's take this up first.

21 MR. STEWART: Your Honor, first I'd like to confirm
22 our understanding of the procedures that have been followed
23 in this for the record, that exhibits we have marked and
24 referred to and we have not referred to, all of them in the
25 record here in the last two days.

1 THE COURT: Why don't we do this. We'll be in
2 recess and let's get our record. Is that all the oral
3 testimony?

4 MR. STEWART: We just have the proffer with respect
5 to Mr. Rodney Fairchild.

6 THE COURT: Why don't we put the Court in recess
7 and then we'll come up here now and take care of these
8 housekeeping matters.

9 (Recess.)

10 (At the bench.)

11 THE COURT: Are you going to make a motion? We'll
12 take the housekeeping stuff here if you're resting your case
13 to make sure that you've got everything in here. Let me with
14 regard to the exhibits that you have offered -- do you have
15 the numbers, David?

16 MR. STEWART: Yes, sir.

17 THE COURT: Okay. Because I think other than the
18 Baltar affidavit I've admitted everything up until today when
19 we --

20 MR. STEWART: There was an objection on Exhibit 1
21 which I don't know the status of.

22 MR. COLE: It was just an objection for foundation,
23 Judge, and at this point credibility. I think foundation has
24 been established.

25 THE COURT: Yeah. And I think likewise because the

1 Baltar affidavit was used.

2 MR. COLE: We can put that in.

3 THE COURT: That would be admitted.

4 MR. COLE: Both of the affidavits.

5 THE COURT: So that you can set out everything that
6 you want to submit then they'll be admitted again. We've
7 already gone to the ones that were formerly of record, David.

8 MR. STEWART: I'm going to read through the whole
9 list.

10 THE COURT: The only question that I've got still
11 on this congressional hearing, I see no reason to have more
12 than the ones, the Wiley Fairchild and Reid Weingarten. Now,
13 I don't have a list of everybody who testified there.

14 MR. STEWART: There were only five witnesses:
15 Judge Nixon, Carroll Ingram, Bud Holmes, and the two you
16 mentioned, Mr. Weingarten and Mr. Fairchild. There is a
17 passage that relates to an argument I made, which I have no
18 particular reason to have in the record. But I think the
19 factual statements of the witnesses in particular with
20 respect to Holmes, for example, he added a bit of testimony
21 that was of considerable significance that never came out in
22 trial and is not the only -- is not a basis for the motion
23 but I think it's something the Court should be aware of.

24 MR. COLE: Your Honor, if it's not a basis for the
25 motion --

1 MR. STEWART: Well, I think it is something that
2 the Court needs to understand. It's going to have to
3 determine if this evidence would have made a difference. It
4 has to understand what the facts really are here so I think
5 Mr. Holmes' testimony, Mr. Ingram's testimony, ought to be
6 included as Judge Nixon did testify at trial. I don't feel
7 so strongly about that.

8 THE COURT: Well, my feeling is still the same and,
9 as I say, I've said several times, I feel like I'm pretty
10 liberal in admitting the evidence in the non-jury case but I
11 just can't see any basis for the testimony of Nixon, Holmes,
12 and Ingram for the Congressional Committee and accordingly I
13 will -- you've objected to same, Mr. Cole?

14 MR. COLE: Yes, I have.

15 THE COURT: Previously now I'll sustain that
16 testimony so that the testimony of Wiley Fairchild and
17 Weingarten before the congressional hearing will now be
18 admitted.

19 MR. COLE: Is that the entire testimony?

20 THE COURT: The complete testimony, yes.

21 MR. STEWART: Okay.

22 MR. COLE: And then arguments of counsel I assume
23 are also not being admitted, Your Honor.

24 THE COURT: Unless there's something that tells me
25 otherwise, yes, they are not.

1 MR. COLE: All right.

2 THE COURT: Okay. Now I'm trying to get the things
3 that I have excluded. I think that may be all that you have
4 offered, David Stewart.

5 MR. STEWART: Yes, sir.

6 THE COURT: That I have not included. I want to
7 make sure that we have designated properly the three papers
8 we call them, that were delivered to me in-camera that during
9 a recess or lunch I checked over, in view of the Pittman
10 question I'll call it, and order that they be turned over to
11 Mr. Stewart and now those are identified as what?

12 MR. STEWART: We've designated only one of them as
13 Exhibit 20. It was the balance of the redacted exhibit that
14 was given to us previously. It is the full version of
15 Exhibit 16.

16 THE COURT: That's not the 302 on Baltar.

17 MR. STEWART: No, it is not. Exhibit 20 includes
18 considerable relevant Jencks material.

19 THE COURT: As long as I -- have you marked it?

20 MR. STEWART: I have marked it. It is on the
21 Clerk's desk.

22 (Off the record.)

23 THE COURT: I've just ordered that the attorneys
24 make certain that their exhibits are in the hands of the
25 Clerk of this Court, Mrs. Harrelson, before they depart this

1 territory. And I suspect that that's no great problem
2 because it's a logistics problem and that's something that
3 Mrs. Harrelson will take care of. And I would request that
4 you -- I think it would be easier if you just provided me
5 sometime in the next week, each of you, we'll work it out, a
6 list to reaffirm. I've got all of them. I've got
7 everybody's exhibits already.

8 Okay. We have that 20. We have the previous -- was it
9 just 1 through 19? Is that the way they came out, David?

10 MR. STEWART: Yes, sir.

11 THE COURT: So they -- again to make certain those
12 exhibits of the Plaintiff are admitted 1 through 21 which is
13 the one that statements that Mr. Fawer testified from. The
14 Baltar affidavit, I don't know that that was designated, the
15 two affidavits.

16 MR. COLE: They were.

17 MR. STEWART: 13 and 14.

18 THE COURT: Very good. That takes care of those
19 items. Anything else of record, David Overlock Stewart, that
20 you want to call our attention to?

21 MR. STEWART: Not with respect to the documents and
22 records, no.

23 THE COURT: Okay. Did you say that you had a
24 motion?

25 MR. COLE: Yes, Your Honor.

1 THE COURT: Okay.

2 THE COURT: Go ahead, Mr. Cole, if you would,
3 please.

4 MR. COLE: Your Honor, I'm going to be very
5 succinct. I think that based on the facts that we have
6 adduced today, I think that there has been, first of all,
7 some serious questions about whether there's been a factual
8 basis put in. That is of course for the Court to determine,
9 weighing credibility and weighing the evidence. But more
10 importantly is the question of the affect on the verdict.
11 And I would submit that they have not sustained their
12 burden. If you look at Mr. Fawer's post-trial motion where
13 he talks about the fact that Counts III and IV were based
14 solely on the testimony of Bud Holmes, whether you look at
15 the appellate brief that states on behalf of Petitioner that
16 the date of the phone call was of no significance to the
17 trial, and that seemed to be the only thing Mr. Fawer could
18 come up with today, in addition although I would submit that
19 Mr. Fawer himself and the Petitioner is bound by Mr. Fawer's
20 post-trial brief in the matter, made immediately after trial
21 and when everything was fresh in his mind, those clearly
22 establish that they have not shown and have failed to show
23 had any of this come out, the verdict would have been
24 different on Counts III and IV, which is their standard. I
25 submit to you, Your Honor, that what happened in this trial

1 is that the jury threw out Wiley Fairchild's testimony.

2 THE COURT: Well, if they didn't, somebody else
3 may. Go ahead.

4 MR. COLE: For example, in Count II, which is the
5 count about whether or not Wiley Fairchild had discussed the
6 Drew Fairchild --

7 THE COURT: I thought about this. I understand
8 what you're saying.

9 MR. COLE: Petitioner agreed, testified so at
10 trial, and they still threw that count out. It seems to me
11 to be clear that the jury ignored Wiley Fairchild and the
12 other testimony stands and none of this evidence they put in
13 today in any way affects the other testimony.

14 THE COURT: I'll let you say something after I
15 finish, if you want, David, because I'm going to deny the
16 motion. I'm going to take it along with the case, as the
17 saying goes. I'm going to explain what I have to say, that
18 I'd like to say it as gently as I can on the record at this
19 bench. I've heard a lot of testimony in my 22 years as a
20 lawyer who was in trial work solidly and 15 years as a Judge,
21 but I've never heard testimony like Wiley Fairchild's in my
22 life yesterday. And Mr. Baltar not too far behind. Where
23 that leaves me, I'm not sure. And I feel the question of
24 materiality that you raise is a serious question, but I don't
25 feel comfortable precluding and concluding on that issue,

1 without hearing from Mr. Weingarten at least, the key witness
2 on the other side, but I will take the Government's motion
3 which I deem in the nature of the motion for a directed
4 verdict at the conclusion of the Petitioner's case here.

5 MR. COLE: That's correct, Your Honor.

6 THE COURT: And I'll take that under advisement
7 along with the case. Did you want to say anything, David?

8 MR. STEWART: Are we going to have opportunity for
9 post-trial briefing, post hearing?

10 THE COURT: Go off the record.

11 (Off the record.)

12 MR. COLE: The only other thing, the Rodney
13 Fairchild proffer.

14 THE COURT: We'll talk informally about that. Go
15 ahead, Mr. Stewart, on Rodney Fairchild. So that this is
16 clear, I had asked Mr. Stewart to wait and we would make a
17 record on this. And this, of course, was part of his case
18 and even though it's not timely, it's not timely because at
19 my request. Go ahead, David.

20 MR. STEWART: Thank you, Your Honor. We would have
21 presented the testimony of Rodney Fairchild. He was in the
22 room yesterday and in Court and available to testify. He
23 would have testified that he's a business partner of brother
24 Wiley's and in 1984 that he knew his brother -- not relevant
25 period is before then, well, throughout the relevant time

1 period. That he knew his brother Wiley wanted to talk to
2 Judge Nixon about his belief that Bud Holmes was blackmailing
3 him, that he was present when Judge Nixon first arrived at
4 his brother Wiley's office a few days later. That he left
5 the office --

6 THE COURT: Excuse me. As I understand it now, he
7 did not hear any discussion between Nixon and Wiley
8 Fairchild.

9 MR. STEWART: He did not hear the substance of the
10 discussion. He said the subject came up and he left.

11 THE COURT: Okay.

12 MR. STEWART: And the next day his brother Wiley
13 told him that he had gotten a call that night from Bud Holmes
14 and Judge Nixon indicating that everything was all right and
15 that he would also testify that these events occurred after
16 the publicity in the newspapers concerning Drew Fairchild's
17 case being passed to the files, which was in January of 1983.

18 THE COURT: Go ahead.

19 MR. COLE: Your Honor, pursuant to the Court's 6-E
20 Order, I would like to read several lines from Mr. Rodney
21 Fairchild's Grand Jury testimony under oath on September 5th,
22 1984, in the Federal Grand Jury in Hattiesburg from Page 7:

23 Q. Did Judge Nixon ever visit Wiley in the office?

24 A. Not to my knowledge.

25 Q. You didn't know that?

1 A. No, sir.

2 MR. COLE: From Page 8, line 12:

3 Q. Let me make sure that I understand. You don't know
4 whether or not Judge Nixon ever visited Wiley in the office?

5 A. No, sir, I do not.

6 THE COURT: In addition, so that we're clear, the
7 objection that you raised earlier, I don't know if it was on
8 record or not, Mr. Cole, related to the timeliness of the
9 request to have Rodney Fairchild testify and that it wasn't
10 in accordance with the pretrial order requirements.

11 MR. COLE: That's true, Your Honor.

12 THE COURT: Go ahead.

13 MR. COLE: But frankly I would waive that objection
14 and just say that it's more to a question of relevance at
15 this point. Because frankly I think the substance of
16 testimony has nothing to do with this hearing. The question
17 of testimony now is just an issue of whether or not there was
18 an effect on the verdict of the matters that are alleged to
19 have not been disclosed.

20 THE COURT: Well, I'm going to tell you, I have a
21 lot of problem with Wiley Fairchild's testimony and I'll be
22 brutally frank about it. I don't think the guy knows the
23 truth from this stage in the game, if he ever did. I don't
24 think he'd know the truth if it walked down the street and
25 waved at him. And his relation to what Rodney told him and

1 all this, as far as I'm concerned, be it a dream that's
2 something that's awfully late in developing and, so for a
3 variety of reasons, I'm not going to accept the proffer.
4 I'll deem it to be in the form of a proffer.

5 MR. STEWART: Your Honor, I'm sorry.

6 THE COURT: I'll deem it to be in the form of an
7 offer of proof and Mr. Cole has objected to it. Go ahead,
8 Mr. Stewart.

9 MR. STEWART: I would like to comment, though.
10 Particularly with respect to this question, with respect to
11 Wiley Fairchild on his statements yesterday concerning the
12 dating and dating of that phone call. I just don't think you
13 could feel the kind of shame that you could feel for Mr.
14 Fairchild and absolutely when Mr. Cole came up and
15 cross-examined him, Mr. Fairchild went down like a tree just
16 like he goes down like a tree everytime a prosecutor
17 questions him. He goes back to his script and he says
18 exactly what he's supposed to say. But I think when he gave
19 that confession, I think it was extraordinarily powerful and
20 I just do not believe it can be wished away like that. I'm
21 sorry. I think it's something very important.

22 MR. HOLLEMAN: May I confer with Mr. Stewart?

23 THE COURT: Okay.

24 (Off the record.)

25 MR. STEWART: Your Honor, I would also ask for

1 permission to review the entire transcript of Rodney
2 Fairchild's Grand Jury testimony. Mr. Cole has picked and
3 chosen here and there and there may be something further of
4 relevance. It seems the record should not be closed without
5 us having --

6 THE COURT: I'll take a look at it in-camera during
7 the lunch hour. Is this all of it?

8 MR. COLE: That's it.

9 THE COURT: Unless you have no objection. Needless
10 to say, it's up to you.

11 MR. COLE: I'd rather it be reviewed in-camera.
12 I'm sorry to put the extra burden on you but, fortunately,
13 it's not long.

14 THE COURT: Mr. Fawer's testimony indicated that
15 Wiley Fairchild went down like a tree when he examined him on
16 Counts I and II.

17 MR. STEWART: Except on the date where he had been
18 scripted. And he did go down on the date and he gave him the
19 date until he remembered the script, it kicked in and back he
20 came.

21 MR. COLE: Well, I think that's characterization of
22 evidence, Your Honor. I think it's up to you to determine
23 what the evidence is on the matter.

24 THE COURT: Okay. Let's have a recess.

25 (Recess.)

1 (Open Court.)

2 THE COURT: Mr. Stewart, you had rested your case
3 and we worked through all of the exhibits. Mr. Cole, are you
4 ready?

5 MR. COLE: Yes, sir, I am, Your Honor. Government
6 calls Jan Little.

7 JAN LITTLE, having first been duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION BY MR. COLE:

10 Q. Would you please state your name?

11 A. January Neilson Little.

12 Q. Mrs. Little, where do you work?

13 A. I work at the law firm of Kecker and Crockett in San
14 Francisco, California.

15 Q. Prior to that, where did you work?

16 A. I worked in the Public Integrity Section in Washington,
17 D.C.

18 Q. That's part of the Department of Justice?

19 A. Yes, it is.

20 Q. In the course of your time in the Public Integrity
21 Section, you're an attorney; is that correct?

22 A. I am.

23 Q. Did you have any responsibilities concerning the
24 prosecution of Walter Nixon, Wiley Fairchild, Drew Fairchild,
25 Bud Holmes?

1 A. Yes, all of them.

2 Q. Robert Royals?

3 A. Right.

4 Q. You worked with Reid Weingarten; is that correct?

5 A. I did.

6 Q. Mrs. Little, I'd like to ask you about the prosecution
7 of Drew Fairchild. Were you involved in that?

8 A. Yes, I was.

9 Q. During the course of the prosecution of Drew Fairchild,
10 did the United States Government, to your knowledge, make any
11 deals with Wiley Fairchild that they would help Drew
12 Fairchild in the course of his State prosecution?

13 A. No.

14 Q. Was the subject discussed with Wiley Fairchild that you
15 know of?

16 A. Not to my knowledge.

17 Q. Drew Fairchild's prosecution by the Federal Government,
18 how did that come up?

19 A. In early March of 1985, Drew Fairchild was scheduled to
20 be sentenced in State Court. At the time of his sentencing,
21 it was plea bargained -- the State Judge announced that he
22 would not accept the plea bargain and Drew Fairchild withdrew
23 his plea.

24 THE COURT: A little louder.

25 A. Sometime after Drew Fairchild withdrew his plea, we

1 received a telephone call from Mr. Hess.

2 MR. STEWART: Objection. If this is personal
3 knowledge as to we received. Did she receive it?

4 A. I did not receive the call. Mr. Weingarten did. I
5 learned of it from Mr. Weingarten.

6 THE COURT: He talked to you as acted.

7 A. That's right. Mr. Weingarten received the call from Mr.
8 Hess informing him of the developments and requesting that
9 the United States seek an indictment of Drew Fairchild.

10 Q. Now, at the time, what was your view as to what was
11 happening to Drew Fairchild in the State Court system?

12 A. My personal view?

13 Q. Yes.

14 A. Well, it was --

15 MR. STEWART: Objection on relevance.

16 MR. COLE: Your Honor, I think this goes to the
17 motivation of the United States.

18 THE COURT: Overrule.

19 A. I didn't know what was happening at the State level. It
20 was very strange that suddenly the plea bargain was not going
21 to be accepted and it appeared to us that perhaps Drew was
22 being punished by persons in the State system because of his
23 cooperation.

24 Q. Now, you stated that Mr. Hess had called in response to
25 that and asked the Federal Government to Federally indict

1 Drew; is that right?

2 A. Yes.

3 Q. Now, following this call, did you personally decide to
4 indict Drew Fairchild?

5 A. No. I don't have that power.

6 Q. Did Reid Weingarten personally decide to indict Drew
7 Fairchild?

8 A. No.

9 Q. Does he have that power?

10 A. No.

11 Q. How did that decision get made?

12 A. Well, it's a two-step process. First, within the Public
13 Integrity Section before a prosecutor can seek an indictment,
14 there's something called the Indictment Review Committee.

15 Q. Could you tell us what that is?

16 A. The Indictment Review Committee is a group of senior
17 prosecutors in the Public Integrity Section. It varies from
18 case to case who will sit on the Indictment Review
19 Committee. A prosecutor who sought an indictment would
20 prepare something called a prosecution memorandum, a pros
21 memo, with a draft indictment, present that to the Indictment
22 Review Committee, the members of the Indictment Review
23 Committee would read the memo and then convene with the
24 prosecutors to discuss the proposed indictment. If the
25 indictment was approved as modified or as is by the

1 Indictment Review Committee, it would then go to the Chief of
2 the Public Integrity Section who would give the final okay
3 and then after that the indictment would be presented, of
4 course, to a Grand Jury who could decide to return it or not.

5 Q. Did you write a pros memo in this case?

6 A. Yes.

7 Q. I'd like to show you what's previously been marked and
8 admitted as Petitioner's Exhibit 5. It's a xerox copy. Do
9 you recognize that?

10 A. Yes.

11 Q. Who was the author of that document?

12 A. I believe that I drafted it. I can't remember to what
13 extent Reid Weingarten had input into this or not. But in
14 reading over it, it reads like my writing so I'm pretty sure
15 I wrote it.

16 Q. Is there also any indication as to whose name is first
17 on the listing of from in this memo?

18 A. My name is first. I don't know that you can infer
19 anything one way or the other from that although perhaps -- I
20 can't remember. Perhaps the secretary put my name first
21 because I gave her the draft. I know the secretary is a
22 woman, Janet Wilkes, who did some of my typing.

23 Q. At the time that this pros memo was being prepared, were
24 there other prosecution decisions being made by the Public
25 Integrity Section involving this case?

1 A. Yes.

2 Q. What was that?

3 A. We sought an indictment of Bud Holmes at the same Grand
4 Jury session that the indictment of Drew Fairchild was
5 sought.

6 Q. In the scheme of things, which was a more important
7 case, Bud Holmes or Drew Fairchild?

8 A. Bud Holmes.

9 Q. Could you tell us what a pros memo is?

10 A. A pros memo is the line attorneys' discussion of the
11 case, everything about the case, the reasons to do it, not to
12 do it, the strengths, the weaknesses, the hopes, the fears,
13 everything you could think of that you want guidance of,
14 guidance for from the other attorneys.

15 Q. Are you encouraged to be candid in these pros memos?

16 A. Yes.

17 Q. Would it be a fair statement to say you're encouraged to
18 be very candid?

19 A. Yes. And to basically say whatever's on your mind. All
20 kinds of things that you're thinking and feeling about the
21 case.

22 Q. Including your own mental impressions; is that right?

23 A. Yes, sir.

24 MR. STEWART: Objection. Leading.

25 THE COURT: Overrule.

1 Q. A pros memo, is that an internal document, a public
2 document, how would you describe it in that regard?

3 A. It's an internal document.

4 Q. Do you expect these documents to be made public at any
5 time?

6 A. No.

7 Q. In this pros memo, do you describe the call from Barry
8 Hess?

9 A. I believe so.

10 Q. I direct your attention to Page 2 around the middle of
11 the page.

12 A. Yes. It's the first full paragraph in the middle of the
13 page.

14 Q. Now, you talked about how you discussed the pros and
15 cons in a pros memo. Do you discuss the pros and cons of
16 indicting Drew Fairchild in this pros memo?

17 A. Yes, we do.

18 Q. I'd like to direct your attention to the first pro.
19 That talks about the need for the cooperation of Drew
20 Fairchild and his father, Wiley Fairchild. Now, could you
21 tell us why you needed Drew and Wiley Fairchild's
22 cooperation? This is your thoughts; is that right?

23 A. Yes.

24 Q. Why did you need their cooperation?

25 A. We needed the cooperation of Drew Fairchild for the

1 upcoming trial of Bob Royals, who was set to be tried in
2 April, I believe. He was indicted in February. And we
3 needed Wiley Fairchild's cooperation in the anticipated
4 prosecution of Bud Holmes.

5 Q. And were there other reasons that you thought might be
6 impending on the horizon that you might need Wiley
7 Fairchild's cooperation?

8 A. If the evidence ended up supporting our seeking of an
9 indictment of Judge Nixon, then presumably Wiley Fairchild
10 would testify there as well.

11 Q. Now, you say here: To the extent that indicting Drew is
12 now desired by both Drew and his father. How did you know
13 Drew desired this?

14 A. His lawyer called and asked.

15 Q. Okay. How did you know Wiley desired this? What gave
16 you that thought or impression?

17 A. Well, the entire case had really been about Wiley's
18 concern about his handling of his son's case. That's what
19 the whole investigation was about. We didn't talk to Wiley
20 or anything but it was, you know, sort of understood that
21 Wiley did not want his son's case to be mishandled.

22 Q. Now, you said you never talked to Wiley about it. Was
23 there ever a contact between you or anyone else in the
24 Government that you know about with Wiley Fairchild or
25 attorneys acting on behalf of Wiley Fairchild concerning the

1 prosecution of Drew Fairchild?

2 A. Well, I have to answer that by pointing out that Barry
3 Hess did represent both of them so when you say --

4 Q. I understand that. But the capacity with which you were
5 dealing with Barry Hess.

6 A. Was as Drew's lawyer.

7 Q. Not as Wiley's lawyer.

8 A. That's right.

9 Q. And you don't know what he went back and told Wiley; is
10 that right?

11 A. I have no idea if he even talked to Wiley about this.

12 Q. You never -- did you ever request that he go back and
13 report to Wiley about this?

14 A. No.

15 Q. During the course of this investigation had you read
16 Wiley Fairchild's Grand Jury?

17 A. I assume I had, yeah.

18 Q. Did it contain any indications of Wiley Fairchild's
19 desire to make sure that his son wasn't punished?

20 MR. STEWART: Objection. She doesn't remember if
21 she did or not.

22 THE COURT: I'll overrule the objection. Did or
23 didn't. I don't know what great matter we have here. Do you
24 recall?

25 A. I assume I read it. I mean, I remember that he did

1 testify about not wanting his son's case to be mishandled.

2 Q. All right. Is that the sole source of your statement in
3 this pros memo? Was just your knowledge, no contacts with
4 Wiley, no contacts with people on his behalf, just your
5 general knowledge of the case?

6 A. Yeah.

7 MR. STEWART: Objection. Leading.

8 THE COURT: Sustained.

9 Q. What was your sole reason for writing down this
10 statement?

11 A. My reason for writing down this statement, I don't know
12 what my reason for writing any statement in this memo was,
13 particularly. But the reason that we sought an indictment of
14 Drew Fairchild was because we thought that things were not
15 going fairly in the State system and that his case ought to
16 be handled in the Federal system. That a fairer disposition
17 would be had in the Federal system.

18 Q. You make the statement here that failure to indict Drew
19 could jeopardize the investigation. Would you explain that
20 statement to us, please?

21 A. If there's a perception that witnesses who are
22 cooperating with the Federal Government can be punished by
23 the State system, then that's not a suitable operation.

24 Q. Was this the only reason, the cooperation of Drew and
25 Wiley Fairchild, that you decided to indict Drew Fairchild?

1 A. No.

2 Q. Was this the predominant reason?

3 A. The predominant reason was our concern that the case be
4 handled in a Federal Court where a more fair treatment could
5 be had. That was the primary concern.

6 Q. Is there any mention of that in the pros memo?

7 A. I assume so. It's part of the first point really and
8 it's also raised as the second point; Drew is unlikely to get
9 a fair trial or sentence in the State system.

10 Q. You talked about it appropriately belonged in the
11 Federal system. Is that mentioned in the pros memo?

12 A. Yes.

13 MR. STEWART: Objection. Leading.

14 THE COURT: Overrule.

15 A. All of the other people involved in the drug smuggling
16 event in August of 1980 were prosecuted Federally and Drew
17 was the only one that hadn't been prosecuted Federally, so it
18 made sense to bring him into the Federal Court as well.

19 Q. Were there also some procedural trial tactics, reasons
20 concerning the trial of Royals, that was involved in this
21 decision?

22 A. Yes. And that's discussed in point four, the problem
23 with discovery that would be entailed.

24 Q. Now, you go through some cons in this pros memo; is that
25 right?

1 A. Yes.

2 Q. And when you list these cons, are they all your thoughts
3 and impressions on the case?

4 A. Yeah.

5 Q. And I'll let the cons speak for themselves. Mrs.
6 Little, had there been a deal with Wiley Fairchild, would it
7 have been included in this pros memo?

8 A. Yes.

9 MR. STEWART: Objection. Speculation.

10 A. Well, I can say --

11 THE COURT: Overrule.

12 A. There is a lengthy discussion in here about our concern
13 with respect to the perception in dealing with Drew, that it
14 was a favor to Drew and would have to disclose it and we did
15 disclose it. And, if there had been a deal with Wiley, that
16 would have been discussed in here, too. There's no reason
17 not to raise everything in this memo.

18 Q. Now, in the course of this memo you talk about, there's
19 reference to it, is a favor to Drew. Do you mention whether
20 or not there's going to be any deals made with Drew?

21 A. No. We mention the fact that we would not make any plea
22 bargain with Drew in terms of his sentence in the Federal
23 Court.

24 Q. And in talking about cases that might be affected by the
25 perception of this prosecution of Drew, what cases are you

1 referring to in the pros memo?

2 A. Well, Drew would be testifying in the Bob Royals' case
3 and also the main focus of this paragraph here is Bud Holmes'
4 anticipated prosecution.

5 Q. Drew Fairchild ultimately pled guilty in the State
6 system; is that correct?

7 A. Yes.

8 Q. Did the Federal Government, to your knowledge, have any
9 involvement in influencing or encouraging that plea to be
10 made or accepted by the State?

11 A. No. I mean, on the contrary. We wanted to stay as
12 hands off of that as we could.

13 Q. Was there an instance that you can recall where you were
14 asked to give help like this?

15 A. There's an incident that I recall vaguely. On a
16 Saturday morning when I was in the office doing some work and
17 I got a call from someone in Mississippi, and I can't
18 remember whether it was someone for Drew's side or someone
19 from the District Attorney's side, but someone was calling to
20 ask me something about the State prosecution. And I remember
21 just telling this person that I couldn't get involved in it
22 at all.

23 Q. Were you present at Wiley Fairchild's sentencing?

24 A. Yes.

25 Q. Was Reid Weingarten there?

1 A. Yes.

2 Q. Were you with him the entire time?

3 A. As far as I know.

4 Q. Did you ever hear Wiley Fairchild say to Reid, don't
5 worry, just like I promised, I'll say everything the way you
6 want me to at Nixon's trial?

7 A. No.

8 Q. Mrs. Little, I'd like to show you what has previously
9 been admitted into evidence as Petitioner's Exhibit 1. Prior
10 to the filing of this 2255 motion, have you ever seen that
11 script?

12 A. No.

13 Q. Have you ever seen handwritten notes of that script?

14 A. No.

15 Q. What role did you play in the Jencks production on the
16 Government's behalf in this trial?

17 A. I was responsible for going through all the witness
18 files and pulling out the material to be produced as Jencks
19 material.

20 Q. And did you ever see this in those files?

21 A. No.

22 MR. COLE: Thank you. I have no further questions,
23 Your Honor.

24 CROSS-EXAMINATION BY MR. STEWART:

25 Q. Morning, Mrs. Little.

1 A. Hi.

2 Q. I do have a few questions and first I'd like to ask:

3 You mentioned you were present at Wiley Fairchild's
4 sentencing; do you recall that?

5 A. Yes.

6 Q. Were you in Mr. Weingarten's presence every moment of
7 that period?

8 A. No, I can't say every moment. I remember being there
9 and I don't remember being absent from his presence.

10 Q. Do you know if you took a phone call during that period?

11 A. If I did?

12 Q. Yeah.

13 A. I suppose it's possible.

14 Q. Do you know if you used the restroom?

15 A. It's possible.

16 Q. Okay. So you can't say that you were with him every
17 minute during that period.

18 A. That's true.

19 Q. He could have had a conversation with Mr. Fairchild and
20 Mr. Baltar?

21 MR. COLE: Objection, Your Honor. This is all
22 speculation. The question should be whether she recollects.

23 THE COURT: Overrule.

24 Q. Could he have had a conversation with Mr. Fairchild and
25 Mr. Baltar during that period that you did not witness?

1 A. I suppose to the extent that anything is possible that
2 could have happened, but I certainly don't recall it. I was
3 there and --

4 Q. You didn't see it?

5 A. I didn't see it.

6 Q. Now, you did not become involved in the Wiley Fairchild
7 investigation until well along in the investigation; isn't
8 that right?

9 A. My involvement with the Mississippi investigation began
10 in October of 1984. I tried a case in Memphis the beginning
11 of October and it was shortly after that.

12 Q. And the docket sheet in the Wiley Fairchild case doesn't
13 even show your name. There's a woman name Susan Koozma
14 listed.

15 A. Susan was involved through the indictment stage and, as
16 the case was getting ready for trial and after I was done
17 with my trial in Memphis, I took Susan's place.

18 Q. And throughout the course of your subsequent involvement
19 in this case, in this investigation here in Mississippi, you
20 were not the primary contact for Wiley Fairchild with the
21 Federal Government; isn't that right?

22 A. That's true.

23 Q. And the plea negotiations were not conducted primarily
24 by you, they were conducted primarily by Mr. Reid Weingarten;
25 isn't that correct?

1 A. That's correct.

2 Q. So there could be any number of things said between Mr.
3 Weingarten and Mr. Baltar and Mr. Fairchild and Mr. Hess on
4 behalf of Mr. Fairchild that you don't know about?

5 MR. COLE: Objection, Your Honor.

6 THE COURT: It's speculation and I'll sustain.

7 Q. Were there conversations between Mr. Weingarten and
8 representatives of Mr. Fairchild and Mr. Fairchild during the
9 plea negotiations that you did not attend?

10 A. Sure.

11 Q. Were there telephone contacts Mr. Weingarten had with
12 people from the Fairchild camp that you were not party to?

13 A. Yes.

14 Q. Do you recall whether you attended a proffer of evidence
15 by Mr. Fairchild on November 1st of 1984?

16 A. I know I did not attend.

17 Q. And when you prepared for the Nixon trial, was Mr.
18 Fairchild to be your witness or Mr. Weingarten's?

19 A. Drew Fairchild was my witness and Wiley Fairchild was
20 Reid's witness.

21 Q. I stand corrected. I confuse the Fairchild's on
22 occasion. Did you attend all the witness preparation
23 sessions with Mr. Wiley Fairchild?

24 A. No.

25 Q. Now switching to Mr. Drew Fairchild, I take it from your

1 testimony that you were not on the telephone line when Mr.
2 Weingarten and Mr. Hess first talked about a Federal
3 indictment of Drew Fairchild.

4 A. That's correct.

5 Q. So all you know about that is what Mr. Weingarten or Mr.
6 Hess might have told you.

7 A. Probably what Mr. Weingarten told me.

8 Q. Staying with Drew Fairchild for a moment, let's focus on
9 March of 1985. The Public Integrity Section at that time was
10 investigating possible corruption in the plea agreement that
11 Bud Holmes had extended to Drew Fairchild; isn't that right?

12 A. Yes.

13 Q. Do you find it all that startling that a Court would
14 have a lot of reservations about accepting a plea agreement
15 that the Public Integrity Section was investigating possible
16 corruption in connection with?

17 MR. COLE: Objection, Your Honor.

18 THE COURT: I'll sustain the objection.

19 Q. Could you think of no reason at that time why a Court
20 might have second thoughts? Did you think of any other
21 reasons why the Court might have second thoughts about
22 accepting that plea agreement?

23 A. What I thought was that it was strange that a deal that
24 had been sewn up years before was suddenly being vacated.

25 Q. Did you research whether a Court under Mississippi Law

1 has to accept a plea bargain?

2 A. Did I research that? No.

3 Q. Do you know whether the Court had to accept the plea
4 bargain or not or retain discretion to refuse it?

5 A. I don't know.

6 Q. Did you think the plea bargain between Bud Holmes and
7 Drew Fairchild was a proper act by Bud Holmes?

8 MR. COLE: Objection, Your Honor. I'm not sure
9 what that has to do with anything here.

10 THE COURT: Where are you going, Mr. Stewart? I
11 don't know where you're going.

12 MR. STEWART: Your Honor, the suggestion here is
13 that this dropped out of the sky, this utterly outlandish
14 thought that the Judge might not accept the plea bargain that
15 the Government is standing there saying is a corrupt,
16 horrible thing. I'd like to find out if the explanation the
17 Government keeps giving is well, it had to be rigged, it had
18 to be fixed, these had to be corrupt state officials.

19 THE COURT: Okay. I'll condemn myself. You know,
20 I've always said I don't want lawyers to make speeches on
21 objections and I've had a lot of faith in you and then you
22 gave me a speech so I'll let you continue but let's not bring
23 up allegations about corrupt state officials and all that
24 malarkey. I've got enough problems.

25 Q. Did you think of any other reason why the Judge might

1 not accept that plea bargain at that time?

2 MR. COLE: Your Honor, that's been asked and
3 answered.

4 MR. STEWART: I don't think it was answered.
5 That's what was objected to.

6 THE COURT: Go ahead. Overrule.

7 A. What was going through my head in March of 1985 was that
8 I knew that Glenn White had been a friend of Bud Holmes,
9 Glenn White was the current District Attorney, and I knew
10 that Judge McKenzie was a friend of Bud Holmes, and it
11 appeared strange that those two people were party to an event
12 where a plea deal that had been worked out a long time before
13 was suddenly vacated. That's what was going through my head.

14 Q. Did you have any evidence indicating that Bud Holmes was
15 controlling their actions with respect to the Drew Fairchild
16 case at that time?

17 A. We had suspicions. We didn't have evidence.

18 Q. Looking at Exhibit 5, which I believe is still in front
19 of you, can you identify the initials in the upper right-hand
20 corner?

21 A. Well, the number is probably going to be the final
22 number.

23 Q. No, I'm sorry. They appear to be handwritten.

24 A. Oh, yeah, mine and Reid's.

25 Q. Can you tell that that's his handwriting?

1 A. Yes, it is.

2 Q. Did he approve this memorandum?

3 A. As far as I know, he read it and he signed off on it. I
4 don't know if that is approving. Yeah, I guess it does.

5 Q. Did he come to you at any point and say you've said
6 things that aren't true, Jan?

7 A. No.

8 Q. Excuse me. I don't mean to be familiar.

9 A. I know you, it's okay.

10 Q. Did he at any point say you've left something out?

11 A. No.

12 Q. When you prepare these prosecution memos, I take it it's
13 very important to be accurate, isn't it?

14 A. Yes.

15 Q. You're not trying to deceive your superiors.

16 A. No.

17 Q. You tell them something that turns out not to be true,
18 it doesn't help you in the future, I take it, aside from your
19 other obligations.

20 A. The point of a prosecution memo is to seek the advice
21 and counsel of the co-counsel in the office. So it's to the
22 prosecutor's advantage to be honest.

23 Q. Were you aware of any concern or was there -- let me
24 focus here, I'm sorry.

25 On the bottom of Page 2, going on to Page 3 is the

1 statement -- could you read that sentence beginning to the
2 extent?

3 A. To the extent that indicting Drew now is desired by both
4 Drew and his father, failure to do so could jeopardize the
5 investigation.

6 Q. Okay.

7 A. You should read the sentence before that, though. It's
8 all part of the same thought.

9 Q. Sure. Go ahead, read it.

10 A. We need the cooperation of Drew and his father, Wiley,
11 in the prosecution of Bob Royals presently under indictment;
12 Bud Holmes, whom we hope to indict soon; and Judge Nixon.

13 Q. Did you think they were going to change their testimony
14 if you did not indict Drew?

15 A. That's not really a fair question. What we thought
16 was --

17 Q. Could you answer the question yes or no?

18 A. Well, I'd like to explain.

19 Q. I'd like -- you're welcome to explain. I'd like you
20 first to answer yes or no.

21 MR. COLE: Your Honor, some questions --

22 THE COURT: I'm not going to get caught in that.
23 You answer the best you can and we'll continue on.

24 A. If there's a perception that witnesses who cooperate
25 with the Federal Government will be punished, then the

1 cooperation will be affected.

2 Q. Does that mean they'll change their testimony?

3 A. I suppose you could call it that.

4 Q. Is that what you intended when you wrote it?

5 A. Well, change testimony is a -- they would not be as
6 willing to testify is a better way of putting it.

7 Q. Well, you have subpoena power still; is that right?

8 A. Yes.

9 Q. And Mr. Wiley Fairchild has testified at this point
10 twice before the Grand Jury; is that right?

11 A. That's right.

12 Q. And did you still have a concern that he would change
13 his testimony?

14 A. We had a concern that his testimony would be more
15 reluctant, I guess that's a better way of putting it.

16 Q. Did you have that concern about Mr. Drew Fairchild as
17 well?

18 A. Sure.

19 Q. If you can move down to the next paragraph, the first
20 statement numbered one starting ironically says: Ironically
21 our indictment of Drew would be a favor to him. That was
22 your understanding, it was a favor to Drew?

23 A. Yes.

24 Q. That was accurate?

25 A. Yes.

1 Q. And it is not in our interest to appear to be helping
2 him too much when he is our witness. What did you mean by
3 that?

4 A. It's a trial tactic. When you have -- when a prosecutor
5 has a witness who the prosecution has done something for, it
6 tends to undermine the credibility of that witness.

7 Q. So you had to try to make this favor look like it wasn't
8 a favor; is that right?

9 A. No. That's not right. We disclosed. I mean, everyone
10 knew that we indicted Drew Fairchild and we disclosed the
11 fact that Mr. Hess had requested it, that there was no
12 surprise there.

13 Q. But you never disclosed it, you did it because you were
14 concerned about jeopardizing the investigation, didn't you?

15 A. I think it's all part of the same thing.

16 Q. Did you ever make a disclosure?

17 A. I think that in the -- there was a letter at some point
18 that we had wrote to Mr. Fawer describing the Drew
19 prosecution, Drew's prosecution, and it's been awhile since
20 I've seen the letter, but I'm pretty sure that it says
21 something to the effect that this was done to insure the
22 fairness of Drew's treatment.

23 Q. Well, let's consider that for a minute. Look at the
24 bottom of the page, would you? Under conclusion. The
25 conclusion states: On balance we believe the investigation

1 would be best served if Drew's case had a Federal disposition
2 at this time. Okay. That doesn't say that justice would be
3 best served, does it?

4 A. No, it doesn't.

5 MR. COLE: Objection, Your Honor. That's
6 argumentative.

7 THE COURT: Okay. Her answer may stand. Let's
8 move on.

9 Q. Do you recall whether you disclosed to Mr. Fawer that
10 your concluding reason for this was -- for indicting Drew
11 Fairchild Federally was in order that the investigation would
12 be best served?

13 MR. COLE: Your Honor, I have to object here.

14 THE COURT: I'll sustain.

15 Q. Do you recall trial testimony by Drew Fairchild under
16 your examination to the effect that the Federal Government
17 cut him no breaks during this investigation?

18 A. Uh-huh.

19 Q. How do you justify that compared to the statement here
20 that our indictment of Drew would be a favor to him?

21 A. The trial testimony concerned whether or not there had
22 been a plea bargain and any sentencing recommendation in this
23 case.

24 Q. That's what breaks means?

25 A. That's what it was in that context. We were talking

1 about whether Reid Weingarten had recommended that he get
2 probation or anything like that.

3 Q. Did you think that the Government had cut Drew Fairchild
4 any breaks in this case?

5 A. No.

6 Q. No?

7 A. No.

8 Q. Even though you said here that indicting him was a favor
9 to him, that wasn't a break?

10 A. When I say cut him any breaks, when that testimony came
11 out, what I was referring to was whether there was any
12 agreement as to how he would be sentenced and there was none.

13 Q. All right. You said you made the Brady and Jencks
14 production in this case; is that fair?

15 A. Yes.

16 Q. While you made that production, did Mr. Weingarten make
17 any statement to you that he had promised Wiley Fairchild
18 during the plea negotiation that he would do what he could to
19 help Drew and that you ought to disclose that?

20 A. No.

21 Q. Did he tell you that he told Wiley Fairchild's lawyer
22 that even after Wiley pled guilty, it was still possible he
23 might drop the charges under some circumstances?

24 A. No.

25 Q. So you didn't disclose that?

1 A. No.

2 Q. Did Mr. Weingarten tell you that he had made a statement
3 to Wiley Fairchild that your office might be able to help
4 with Wiley's disqualification from Federal contract?

5 A. What?

6 Q. I can repeat the question. Did Mr. Weingarten tell you
7 that he had made the statement to Wiley Fairchild that your
8 office might be able to help with Wiley's disqualification
9 from Federal contracting?

10 A. I don't think we could. No. No.

11 Q. He didn't tell you that?

12 A. No, I've never heard that before.

13 Q. Did he tell you that Wiley's representatives had asked
14 about pardon procedures?

15 A. No.

16 Q. Did he tell you that he had explained those procedures
17 to them and that the pardon attorney would ask him about the
18 quality of Mr. Fairchild's cooperation in determining a
19 pardon recommendation?

20 A. No.

21 Q. I'd like to show you what's been marked -- this is just
22 a copy of it. But it's Petitioner's Exhibit 20. Have you
23 seen that before?

24 A. I don't know if I have or not. Could I read it?

25 Q. Sure.

1 A. I'm sure I have seen it before, but I don't really
2 remember it.

3 Q. Do you know if you reviewed it in making the Brady and
4 Jencks production?

5 A. As I sit here today I can't say whether I did or not. I
6 don't remember.

7 Q. So you don't recall making a decision one way or another
8 whether that was produceable as part of discovery?

9 A. I just can't remember.

10 MR. STEWART: I have no further questions. Thank
11 you.

12 RE-DIRECT EXAMINATION BY MR. COLE:

13 Q. First of all, as far as Exhibit 20 goes, that's an FBI
14 teletype, isn't it?

15 A. Yep.

16 Q. It's not a 302?

17 A. No.

18 Q. It's not a memorandum to files?

19 A. No.

20 Q. That's an internal FBI document, isn't it?

21 A. Yeah.

22 Q. You said you weren't sure whether you had gotten it in
23 the course of your work as a Federal prosecutor. Do you
24 usually get the internal FBI documents?

25 A. No, we get 302s.

1 Q. Does it at all change your recollection about whether
2 you're sure or not sure whether you ever got this document
3 from the FBI?

4 A. I don't remember it.

5 Q. Okay. When Drew's case was being -- his plea was being
6 withdrawn in State Court, were you aware at that time or had
7 you had information at that time that Judge McKenzie, the
8 Judge who had ruled on Drew's plea and not accepted it in the
9 State Court, had previously visited Wiley Fairchild with Bud
10 Holmes?

11 A. Yep. 7:00 in the morning.

12 Q. To talk about Drew's case?

13 A. Yeah.

14 Q. That go into your thinking about the punishment at all?

15 A. Sure.

16 MR. COLE: Thank you.

17 THE COURT: Nothing, Mr. Stewart?

18 MR. STEWART: No.

19 THE COURT: You may step down.

20 A. May I be excused?

21 THE COURT: Yes, you're excused. All witnesses are
22 excused unless I otherwise instruct.

23 Mr. Stewart and Mr. Cole, approach the bench a second.

24 (At the bench off the record.)

25 MR. COLE: Government's next witness is Reid

1 Weingarten.

2 REID WEINGARTEN, having first been duly sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION BY MR. COLE:

5 Q. Would you please state your name for the record?

6 A. Reid Weingarten.

7 Q. Spell the last name.

8 A. W-e-i-n-g-a-r-t-e-n.

9 Q. Mr. Weingarten, how are you employed?

10 A. I'm in private practice at Steptow and Johnson in
11 Washington, D.C. I'm also employed part-time by Judge Walsh
12 in the Iran contra investigation.

13 Q. You're an attorney?

14 A. Yes.

15 Q. Prior to your employment with Steptow and Johnson, where
16 did you work?

17 A. Justice Department.

18 Q. Any particular section?

19 A. Public Integrity Section.

20 Q. In the course of your work with the Public Integrity
21 Section, were you involved in the prosecution of Judge Nixon,
22 Wiley Fairchild, Bob Royals, Drew Fairchild, Bud Holmes?

23 A. I was.

24 Q. Leave anyone out?

25 A. Wiley Fairchild, Bud Holmes, Judge Nixon, Bob Royals,

1 and Drew Fairchild.

2 Q. I'd like to talk for a moment about the prosecution of
3 Wiley Fairchild. Direct your attention to July of 1984. Did
4 Mr. Fairchild appear in the Federal Grand Jury at that time?

5 A. He did.

6 Q. During the course of the examination of Mr. Fairchild,
7 did he make statements concerning oil and gas deals he had
8 had with Judge Nixon?

9 A. He did.

10 Q. When you viewed those statements and heard those
11 statements and reviewed them from the Grand Jury transcript,
12 what conclusion did you come to?

13 A. That it was one of those rare instances where someone
14 basically had confessed to a crime in the Grand Jury.

15 Q. Were there also any statements Mr. Fairchild made that
16 you considered perjurious or false?

17 A. Yes.

18 Q. What did those concern?

19 A. Part of the oil and gas transaction with Judge Nixon.

20 Q. Did Mr. Fairchild say anything in that Grand Jury
21 concerning a phone call from Judge Nixon, Bud Holmes, or any
22 meetings with Judge Nixon about his son's case?

23 A. No, he did not.

24 Q. Did you know anything about those phone calls at the
25 time of the Grand Jury?

1 A. No.

2 Q. Was Mr. Fairchild indicted?

3 A. He was.

4 Q. Do you recall approximately when that was?

5 A. In the fall of 1984. You'd have to refresh my
6 recollection as to the date.

7 Q. Matter of public record. Were there any plea
8 negotiations in that case?

9 A. Eventually.

10 Q. Could you tell us how those plea negotiations began?

11 A. My best recollection would be that there would have been
12 some pretrial events in Court in New Orleans before Judge
13 Carr; and there would be conversations between the lawyers
14 and I think there were just some introductory comments about
15 a possible resolution that never got very far.

16 THE COURT: Excuse me. Judge Carr was from?

17 A. New Orleans. Eastern District of Louisiana. He was the
18 presiding Judge in the case.

19 And then the Government was contacted by representatives
20 of Wiley Fairchild and requested a meeting, a meeting was
21 held in Jackson, Mississippi. Wiley Fairchild made a
22 proffer. And then there were serious negotiations with Barry
23 Hess.

24 Q. Let me ask you this, Mr. Weingarten. Prior to the
25 serious plea negotiations beginning end of October, beginning

1 of November, had you ever indicated to anyone that you needed
2 to get a "smoking gun" out of Wiley Fairchild?

3 A. No.

4 Q. Now, the representative who had contacted the Government
5 on behalf of Wiley Fairchild, do you know who that was?

6 A. Baltar. John Baltar.

7 Q. And had Mr. Baltar made any proffer or given any
8 information that you were told about concerning what Mr.
9 Fairchild might have to offer to the Government as far as
10 testimony?

11 A. I was contacted by the Attorney General of Mississippi.
12 And the Attorney General of Mississippi advised me that he
13 had been contacted by Baltar and Baltar made serious
14 allegations about Judge Nixon and had represented that he
15 wanted to have a meeting with the Government. That Wiley
16 Fairchild's other lawyers were not being cooperative, were
17 urging him not to cooperate with the United States, and this
18 information was relayed to me. Subsequent to that --

19 Q. Let me just stop you there. Did the Attorney General of
20 Mississippi, that would be Mr. Ed Pittman; is that right at
21 the time?

22 A. Yeah.

23 Q. Did he tell you the nature of the allegations that Mr.
24 Fairchild would give or that Mr. Baltar had told him Mr.
25 Fairchild would give?

1 A. I'm sure he did. I'm sure they were related to the oil
2 and gas leases that were transferred from Wiley Fairchild to
3 Judge Nixon, but I don't have a real specific recollection.

4 Q. All right. Would it refresh your recollection if I
5 showed you the memorandum -- was Weldon Kennedy involved in
6 this?

7 A. Absolutely. Weldon Kennedy was the pivot point.

8 Q. Would it refresh your recollection if I showed you a
9 memorandum Weldon Kennedy wrote, which is Respondent's
10 Exhibit S, concerning that contact?

11 A. Yes. You showed this to me just recently and it
12 refreshed my recollection a great deal.

13 Q. And what was the proffer that -- if you could look at
14 that and see if that refreshes your recollection.

15 A. Well, yes, this refreshes my recollection. Generally
16 speaking, the Attorney General of Mississippi called me up
17 and said that Baltar was saying that pressure was being put
18 -- pressure had been put upon Wiley Fairchild to transfer
19 valuable oil and gas leases to Judge Nixon and, in return,
20 representations had been made to Wiley Fairchild that his
21 son's case would be handled to his advantage.

22 Q. How did you view this proffer? How did you view this
23 kind of information in terms of your case?

24 A. It was a bold representation and it caused me to come to
25 Mississippi almost immediately.

1 Q. And did you bring anybody with you?

2 A. Yes. I brought Marshall Jarrett, a very experienced
3 lawyer from the Public Integrity Section.

4 Q. What was the request on Mr. Fairchild's side as to what
5 he wanted in return for this valuable information that he was
6 going to be giving?

7 A. Immunity.

8 Q. Was there a time when you came down? Do you recall the
9 date of that?

10 A. I mean, I'm looking at this. It was October 31st,
11 November 1st, something like that.

12 Q. And at that time did you meet with Mr. Fairchild?

13 A. I did.

14 Q. Did he give a proffer?

15 A. He gave a proffer.

16 Q. Who was present at this meeting?

17 A. It was in Mr. Kennedy's office here in Jackson with the
18 FBI. It was Mr. Kennedy, Marshall Jarrett, it was me. On
19 behalf of Wiley Fairchild, Wallace Gunn, and John Baltar.

20 Q. Now, prior to this meeting, had you ever met privately
21 with John Baltar?

22 A. I don't believe so. I think I saw Baltar in New Orleans
23 at the pretrial hearings. That would have been the occasion
24 when I would have seen Baltar. I may have seen Baltar when
25 Wiley testified in the Grand Jury the first time, but at that

1 time Wiley was basically -- I was working with Judge Bob
2 Richter who was working with me on the case and basically
3 Wiley was Richter's witness so I would not have had contact
4 with Baltar.

5 Q. Now, this proffer that came from Wiley Fairchild, was it
6 taped?

7 A. Yes. There was a taped proffer, yes, sir.

8 Q. Now, the entire meeting between the Government and Wiley
9 Fairchild and his representatives, was that taped?

10 A. No.

11 Q. Prior to the taping, what did the discussion concern?

12 A. We would have shaken hands, set the ground rules, and
13 Wiley would have offered information. He would have
14 basically said what he said in the proffer.

15 Q. Did you at any time instruct Wiley Fairchild what he had
16 to say in the proffer?

17 A. Absolutely not.

18 Q. Did you at any time instruct or dictate to Wiley
19 Fairchild things you wanted to hear for him to get a plea
20 bargain?

21 A. Absolutely not.

22 Q. Did you at any time encourage Wiley Fairchild to say
23 things that were not what he wanted to say or was not the
24 truth?

25 A. Absolutely not.

1 Q. Mr. Fairchild then gave a proffer; is that right? That
2 was taped.

3 A. Yes.

4 Q. Could you tell us what that proffer was?

5 A. I think it consisted of conversations relating to two
6 areas, one having to do with the oil and gas transfer to
7 Judge Nixon, and one having to do with an individual named
8 Preacher Shows.

9 Q. Now, you've read over the taped transcript of Mr.
10 Fairchild's proffer?

11 A. You showed it to me. I scanned it. I looked at it,
12 sure.

13 Q. And based on your recollection of the events, was there
14 anything different that Mr. Fairchild had said during the
15 untaped portion compared to the taped portion?

16 A. I don't believe so.

17 Q. How was Mr. Fairchild's proffer compared to what Mr.
18 Baltar had promised would be coming out?

19 A. Substantially less incriminating as to other
20 individuals.

21 Q. And was it less incriminating as to Judge Nixon?

22 A. Yes.

23 Q. What was the Government's response on that day? Did
24 they make one as far as Mr. Fairchild's proposed deal for
25 immunity?

- 1 A. — I'm sure not. I'm sure that Marshall and I would have
2 excused Mr. Fairchild, discussed it between ourselves, and
3 contacted our superiors back in Washington.
- 4 Q. Did you have a meeting the next day with Mr. Baltar?
- 5 A. Mr. Baltar showed up the next day, yes.
- 6 Q. Who was present at this meeting?
- 7 A. I think it was Mr. Baltar on his own, on behalf of Wiley
8 Fairchild. I think it was Marshall, it was me, and Weldon
9 Kennedy.
- 10 Q. At that meeting, what did you convey to Mr. Baltar?
- 11 A. Simply that his request for immunity would not be
12 granted.
- 13 Q. Did you tell him why?
- 14 A. We didn't think it was appropriate.
- 15 Q. Did you at all tell him what you thought of Mr.
16 Fairchild's proffer?
- 17 A. I don't have a recollection of that.
- 18 Q. Was there ultimate -- did you give him a counteroffer?
- 19 A. No. I don't think the negotiations started until Barry
20 Hess came to the case soon thereafter. I don't recall plea
21 negotiating with Baltar. I remember advising Baltar that we
22 had concluded that immunity was not appropriate.
- 23 Q. Did you ever tell Baltar Wiley could get one count?
- 24 A. I don't remember doing that.
- 25 Q. Just don't know?

1 A. I don't think I did.

2 Q. Was there a plea agreement reached with Wiley Fairchild?

3 A. Yes. I mean, soon after the meeting with Baltar, there
4 was a plea agreement.

5 Q. And what did that plea agreement amount to?

6 A. Wiley would plead guilty to Count I of the indictment,
7 Count II of the indictment would be dismissed.

8 Q. What was Count I and what was Count II?

9 A. Count I was 18 United States Code 201-G, gratuity; and
10 II was perjury. Wiley promised to be completely cooperative
11 with the United States and the United States would represent
12 to the Judge that if Wiley's cooperation was appropriate,
13 that there should be no jail.

14 Q. Now, by appropriate, what do you mean?

15 A. Complete honesty.

16 Q. Did you want Wiley to lie in favor of the Government?

17 A. Absolutely not.

18 Q. If he had, what would you have done with the plea
19 agreement?

20 A. Trashed it.

21 Q. What would have happened to Mr. Fairchild?

22 A. He would have been prosecuted.

23 Q. When this plea negotiation was finally consummated, did
24 you have a conversation with Mr. Hess concerning questions he
25 had about dismissing the charges ultimately?

1 A. Yes.

2 Q. Tell us about that, please.

3 A. Hess basically asked me, if all goes well with the
4 cooperation, would the conviction ever go away. And I said
5 something to the effect the conviction would go away if we're
6 satisfied that Wiley Fairchild didn't commit crimes. But
7 look at the Grand Jury. And we discussed how unlikely that
8 would be, given the fact, that in our view, Wiley had
9 basically confessed to paying an illegal gratuity to a public
10 official.

11 Q. Was there ever any plea agreement with Wiley Fairchild
12 or promise by the Government that in return for his
13 testimony, in return for his plea, in return for his
14 cooperation, you'd dismiss the charge?

15 A. No. After my conversation with Hess did come up again,
16 though, and conversations were had between me and
17 representatives of Wiley Fairchild about the subject and I
18 would continually tell them that the case -- the felony count
19 that he pled to would be dismissed only if we came to the
20 conclusion that he committed no crime.

21 Q. Did there come a time when the subject of pardon was
22 brought up concerning Mr. Fairchild?

23 A. Yes.

24 Q. Do you recall when it was?

25 A. I think the first time pardon was mentioned was at the

1 meeting in Weldon Kennedy's office with Baltar. I think
2 Baltar made representations to us that he had arranged for or
3 that he had secured a pardon for Drew Fairchild and that's --
4 with the Governor of Mississippi. And thereafter there were
5 conversations about pardons with me on the Federal level for
6 Wiley Fairchild.

7 Q. This reminds me of something that I forgot to ask you.
8 Concerning that meeting with Baltar, after Mr. Baltar left,
9 was there discussion amongst you and Mr. Kennedy and Mr.
10 Jarrett concerning your impressions of Baltar at that
11 meeting?

12 MR. STEWART: Objection as to impressions.

13 THE COURT: Overrule.

14 A. Yes.

15 Q. And what was that discussion?

16 A. Well, we concluded that we should be extremely wary that
17 his representations to Mr. Kennedy through Attorney General
18 Pittman had not proved to be correct. He basically clouded
19 his relationship with Michael Fawer. We concluded anything
20 he told Baltar would likely get back to Michael Fawer and
21 there was a strong suspicion that he was wired during the
22 meeting with Weldon Kennedy, Marshall Jarrett, and myself.

23 Q. Let's return to the pardon process. In the course of
24 your time at the Justice Department, have you been involved
25 in any situations where there have been applications of

1 pardons on cases you've done?

2 A. Sure.

3 Q. And you're familiar with the procedure?

4 A. Yes.

5 Q. Does the procedure include a waiting period?

6 A. Yes. Generally speaking there needs to be a five-year
7 period between a conviction and an application.

8 Q. And who is the application made to?

9 A. The pardon attorney.

10 Q. What does the pardon attorney do?

11 A. He reviews the application, secures relevant
12 information, and makes a decision. I think the President
13 actually grants the pardon but acts upon the recommendation
14 of the pardon attorney.

15 Q. And what does the Government Attorney who prosecuted the
16 case, what's his role?

17 A. Provides facts.

18 Q. Is that it?

19 A. The criminal division will make a recommendation to the
20 pardon attorney as to whether or not the pardon should be
21 granted. Typically the trial attorney who handled the case
22 would start the process by making a recommendation.

23 Q. When you were contacted by Mr. Fairchild's
24 representatives concerning the pardon, what did you tell
25 them?

1 A. I would explain the procedures to him.

2 Q. Did you make them any promises about what you would do?

3 A. No.

4 Q. Did you make them any guaranties as to what action you
5 would take on behalf of Mr. Fairchild?

6 A. Only that I would provide the pardoning attorney with
7 all relevant facts.

8 Q. Good, bad, or indifferent?

9 A. Sure.

10 Q. Did you tell them about the waiting period?

11 A. Yes.

12 Q. Did you tell them --

13 A. I also would have told them that the basis of the
14 waiting period has nothing to do with the case but is
15 typically the conduct of the person seeking the pardon,
16 unrelated to his criminal activity.

17 Q. Did you ever tell John Baltar that anything you did
18 would have to wait until the entire Nixon prosecution was
19 over?

20 A. No.

21 Q. I'd like to talk about the prosecution of Drew Fairchild
22 for a moment.

23 A. Yes.

24 Q. Drew Fairchild was prosecuted Federally; is that
25 correct?

- 1 A. He was.
- 2 Q. Prior to your prosecution of Drew Fairchild Federally,
3 did you write a letter on behalf of Drew Fairchild to the
4 State of Mississippi District Attorney that was handling this
5 case?
- 6 A. I did.
- 7 Q. He had a case at State Court at that time?
- 8 A. He did.
- 9 Q. Did he have a plea agreement with the State at that
10 time?
- 11 A. Yes.
- 12 Q. What was your understanding as far as the State Court's
13 rule in the plea agreement?
- 14 A. I'm not sure I'm following you.
- 15 Q. I'll move on to another question. When you wrote the
16 letter for Drew Fairchild, did you disclose that letter to
17 Mr. Fawer before the trial of Judge Nixon?
- 18 A. Sure.
- 19 Q. What did that letter basically state?
- 20 A. Just extended Drew's cooperation with the Federal
21 Government.
- 22 Q. What happened to Drew's plea in the State Court?
- 23 A. It was withdrawn.
- 24 Q. Do you know why?
- 25 A. I was told by his lawyer that the Judge said he would

1 not accept the plea agreement and intimated that he was going
2 to sentence Drew severely if he came before him.

3 Q. Who was his lawyer? Who was Drew's lawyer?

4 A. Barry Hess.

5 Q. After this plea was withdrawn, did Barry Hess contact
6 you about the case?

7 A. He did.

8 Q. What did he say?

9 A. He said that it was his view that Drew -- that the plea
10 was not accepted and Drew was going to be sentenced severely
11 because he was cooperating with the Federal Government.

12 Q. Did he say anything to you about what he wanted you to
13 do?

14 A. Take care of the problem is the impression I got.

15 Q. By doing what?

16 A. I think -- in the first conversation there was almost a
17 note of panic that Drew was getting hit and getting hit hard
18 because he's cooperating with you. What are you going to do
19 about it? I think I probably had several conversations with
20 Barry Hess about this subject. And eventually Barry Hess
21 wanted the Government to take over the prosecution of Drew
22 Fairchild.

23 Q. Was that Barry Hess's idea?

24 A. I don't know if it was his idea or somebody else's
25 idea. That's what he presented to me.

1 Q. It wasn't your idea is what I'm saying.

2 A. No. I mean, at that time Drew Fairchild was not being
3 prosecuted until after the contact with Barry Hess by the
4 Federal Government.

5 Q. Did Mr. Hess state anything to you about what the effect
6 of a Federal prosecution could be in the Mississippi State
7 Courts?

8 A. He may have eventually. I don't have a specific recall
9 on that.

10 Q. That effect is --

11 A. There were conversations like that because there were
12 conversations before the Judge, Judge Parker in Baton Rouge,
13 so I was privy to that information.

14 Q. After Barry Hess's call and request that you indict Drew
15 Federally, did you make the decision on your own to indict
16 Drew Federally?

17 A. No. I never made a decision to prosecute anyone alone.

18 Q. Who made that decision?

19 A. It would be the Criminal Division, Public Integrity
20 Section.

21 Q. How was that decision made?

22 A. The lawyers in the field would make a recommendation,
23 the recommendation would be considered by the Indictment
24 Review Committee, and then the decision of the Indictment
25 Review Committee would be passed upon by the Chief of the

1 Public Integrity Section. If it was a significantly
2 significant case, the case would go up the line to the
3 Criminal Division and it would be reviewed there.

4 Q. Was a pros memo written in this case?

5 A. Yes.

6 Q. I'd like to show you what's in evidence as Petitioner's
7 Exhibit 5. Do you recognize that?

8 A. Yes.

9 Q. Are those your initials on it?

10 A. Probably. I mean, those are RHW. I'm sure Jan would
11 have written that.

12 Q. Is it possibly your initials?

13 A. It's possible. They don't look like mine.

14 Q. Did you write that?

15 A. No.

16 Q. Who did?

17 A. Jan Little.

18 Q. Did you review it?

19 A. I probably did. I have no recall of doing that right
20 now.

21 Q. At the time this pros memo was written, were you working
22 on something else involved in this case?

23 A. Well, we were about to return the indictment against
24 Holmes and, as I recall, we were in the middle of pretrial
25 motions. So I would have assigned Jan to the task of putting

1 this together.

2 Q. Jan was a subordinate of yours at that point in the
3 trial?

4 A. Yeah.

5 Q. And you would take the lead on the other cases; is that
6 correct?

7 A. I would have taken the lead on this. I mean, just the
8 function of putting the pros memo together would have fallen
9 to her. It was not viewed as a significant thing. We had
10 representations at some point from Hess that Drew was going
11 to plead guilty, so the decision of whether or not to
12 prosecute him was not a particularly difficult one in terms
13 of how the case would turn out in Court.

14 Q. Now, a pros memo, what is the purpose of it? What's its
15 reason?

16 A. To apprise the Public Integrity Section of all the
17 possible ramifications that could ensue in a case and to give
18 the broadest overview to a group of experienced lawyers so
19 that the proper decision could be made as to whether or not
20 to prosecute the case.

21 Q. Is it a fairly candid document?

22 A. Sure.

23 Q. Now, in that document there are some pros and cons that
24 are discussed as far as indicting Drew Fairchild. I direct
25 your attention to Page 2.

1 A. Okay.

2 Q. Starting at the bottom. The first one listed there
3 states that Drew and Wiley's cooperation are needed for
4 various prosecutions to the extent that they want a Federal
5 indictment. Failure to do so could jeopardize the
6 investigation.

7 Now, Mr. Weingarten, how did you know, what led you to
8 believe, if you have an answer, that Wiley wanted Drew
9 prosecuted?

10 A. His lawyer, Hess, contacted the Government and said take
11 care of the problem and one of the ways he suggested that th
12 problem be taken care of is that the case be taken over by
13 the Federal Government.

14 Q. Now, was Hess acting on behalf of Wiley Fairchild or
15 acting on behalf of Drew Fairchild when he called?

16 A. Well, I'm sure on behalf of Drew but he also represented
17 Wiley.

18 Q. Was there any contact in the regard that Wiley wanted
19 this case prosecuted Federally?

20 A. No. Not that I can recall, not that I know of.

21 Q. Was there any conversation about what Wiley's reaction
22 would be with Mr. Hess or with Mr. Fairchild concerning a
23 prosecution of Drew Fairchild?

24 A. I would have had conversations with Hess, I think, about
25 the effect of the view that someone cooperating with the

1 Federal Government gets smacked by the State Government.

2 Q. I'm asking about Mr. Fairchild specifically, not
3 generally, but Mr. Fairchild specifically.

4 A. Not that I recall.

5 Q. At that point, did you have any opinion from the
6 evidence in the case as far as Wiley Fairchild's view on this
7 matter when Drew Fairchild started to get into this situation
8 with the State?

9 A. Well, I mean, the whole case revolved around the fact
10 that Wiley felt that his son's case was being manipulated.

11 Q. That was the whole case that you were investigating?

12 A. That's how it started. That's how Wiley -- that was his
13 initial complaint when he sent Baltar to the United States
14 Attorney.

15 Q. Was there any plea agreement made with Wiley Fairchild
16 to indict Drew?

17 A. No.

18 Q. Was there any contact about this matter prior to Drew
19 having his plea withdrawn in the State Court?

20 A. No.

21 Q. Was there any contact with Wiley Fairchild --

22 A. Well, there was contact. I didn't remember I wrote the
23 letter until I was shown it on The Hill. I must have been
24 contacted and asked to write the letter either by Glenn White
25 or Barry Hess. I assume it was Hess.

1 Q. And Hess would have been acting on behalf of Drew?

2 A. Yes.

3 MR. STEWART: Objection, Your Honor. We've been
4 getting into a lot of would have beens.

5 THE COURT: I'll sustain the objection to the last
6 question. The answer is stricken.

7 Q. Was acting on behalf of Drew?

8 A. Yes.

9 MR. STEWART: Objection. The question was whether
10 Mr. Hess had done it.

11 THE COURT: He's asking him if Hess was acting on
12 behalf of Drew and he said yes and I'll let the answer stand,
13 take it for the value it may have and all the issues of this
14 case I deem advisable and suitable under all the
15 circumstances.

16 Is this a convenient time to break or would you rather
17 go ahead and continue?

18 MR. COLE: Let me just ask one or two more
19 questions, Your Honor. I think it might be a convenient
20 time.

21 Q. Was there ever a deal struck with Wiley Fairchild or an
22 agreement or, in any way, communication to Wiley Fairchild
23 that we're going to indict Drew because we know you want it
24 done and we're doing it for you as a favor and inducement and
25 in return for your testimony?

- 1 A. No.
- 2 Q. Were there other reasons to indict Drew Fairchild?
- 3 A. Absolutely.
- 4 Q. What was the predominant reason, Mr. Weingarten, in your
5 mind to indict Drew Fairchild?
- 6 A. I believe that there was an appropriate Federal
7 connection, given the fact that the Federal Government was
8 basically taking over the Drew Fairchild case and we were far
9 more confident with Drew getting a fair and just result
10 before Judge John Parker of Baton Rouge than we were of the
11 case being handled locally.
- 12 Q. Are those reasons stated in the pros memo?
- 13 A. I believe so.
- 14 Q. Now, Drew Fairchild ultimately pled guilty in State
15 Court after this; is that correct?
- 16 A. Yes.
- 17 Q. Did you or anyone in the Federal Government have
18 anything to do with securing Drew Fairchild's State plea?
- 19 A. No.
- 20 Q. Did you at all encourage anyone in the State Government
21 to accept Drew Fairchild's plea agreement?
- 22 A. No. I would have had conversations with Glenn White
23 simply to advise him as to what we were doing.
- 24 Q. Just giving information?
- 25 A. Yes.

1 Q. Mr. Weingarten, under your understanding, are you
2 required to turn over to the defense in a case as Brady
3 material your own mental impressions?

4 A. No.

5 Q. Is there a requirement to turn over specific deals,
6 promises, and inducements made to witnesses?

7 A. Sure.

8 Q. With the prosecution of Drew Fairchild as it relates to
9 Wiley Fairchild, was there any such deal, promise, or
10 inducement made?

11 A. No.

12 MR. COLE: Your Honor, this could be a good time to
13 stop.

14 THE COURT: Let's recess.

15 (Recess.)

16 THE COURT: We're ready, Mr. Cole.

17 MR. COLE: Thank you, Your Honor.

18 Q. Mr. Weingarten, did there come a time in the course of
19 the prosecution of Wiley Fairchild where he went to be
20 sentenced?

21 A. Yes, sir.

22 Q. Prior to that sentencing, did you receive any contact
23 from his lawyers?

24 A. I'm sure I did.

25 Q. Were you asked any questions about what Mr. Fairchild

1 should say at sentencing?

2 A. I recall having conversations with Wallace Gunn. Mr.
3 Gunn was obviously unfamiliar with Federal proceedings,
4 particularly sentencing proceedings, and I did have a
5 conversation with him about what would happen at Wiley's
6 sentencing.

7 Q. Did Mr. Gunn inquire as to what Mr. Fairchild should
8 say?

9 A. I don't remember specifics. What I do remember is
10 offering my advice that Wiley Fairchild should tell the
11 truth, don't try to fool the Court.

12 Q. Did Mr. Fairchild make a long statement at his
13 sentencing?

14 A. No.

15 Q. Was there anything in that statement that you found
16 helpful to the Government or harmful to the Government?

17 A. I really don't recall what he said.

18 Q. Prior to going into that sentencing, did you have a
19 private conversation with Mr. Fairchild?

20 A. No.

21 Q. Was there any time when Mr. Baltar was present and Mr.
22 Fairchild and you and that's all during that period of time?

23 A. I doubt it. I don't recall it.

24 Q. At any time during that period, just prior to going in
25 for sentencing, did you ever hear Mr. Fairchild say to you

1 that just as he had told Mr. Baltar, he is going to testify
2 just the way you want him to at Judge Nixon's trial?

3 A. No.

4 Q. During the trial of Judge Nixon and the jury selection
5 time, did you receive anything from Mr. Baltar either at that
6 time or earlier concerning jury selection?

7 A. At some point in time Mr. Baltar provided the Government
8 with a jury survey, some kind of survey that Mr. Fairchild
9 had done in anticipation of his trial.

10 Q. What did you do with it?

11 A. I don't remember doing anything with it.

12 Q. Did you use it in the course of your voir dire and your
13 jury selection?

14 A. No.

15 Q. Had you ever asked for this from Mr. Fairchild or Mr.
16 Baltar?

17 A. No.

18 Q. Had you ever expected it to be given to you from Mr.
19 Fairchild or Mr. Baltar?

20 A. No.

21 Q. Was Mr. Baltar present during the time of the jury
22 selection in the case?

23 A. Frequently.

24 Q. Was he present during the whole trial?

25 A. Frequently. I can't say whether or not he was there

1 every minute but he was there a lot.

2 Q. What was Mr. Baltar doing while he was there during jury
3 selection?

4 A. Basically flitting around and occasionally providing us
5 with advice or tidbits of information. I'm not really sure.

6 Q. Had you ever asked him to provide you with this advice
7 or these tidbits?

8 A. No.

9 Q. Had you ever asked him to go out and research
10 backgrounds of potential jurors?

11 A. No.

12 Q. Did you expect him to be doing this?

13 A. No.

14 Q. Did you ever use any of these tidbits he provided?

15 A. Not that I recall. _____

16 Q. As far as the survey and the offer of tidbits from Mr.
17 Baltar, were these at all negotiated with Wiley Fairchild as
18 part of his plea that he would provide these things or have
19 Mr. Baltar provide them?

20 A. No, sir.

21 Q. Was there any discussion with Mr. Fairchild or his
22 representatives that this would be provided to the
23 Government?

24 A. No, sir.

25 Q. Prior to Mr. Fairchild testifying in the Grand Jury in

1 November of 1984, did you have any conversations with John
2 Baltar where you asked him to prepare Mr. Fairchild for
3 testimony?

4 A. Not that I recall, not with Baltar.

5 Q. Did you ever tell Mr. Baltar that Mr. Fairchild had to
6 say certain things in the Grand Jury and he should rehearse
7 him on those things?

8 A. Absolutely not.

9 Q. Did Mr. Baltar ever tell you or did you ever ask him to
10 prepare a script for Mr. Fairchild prior to his going in the
11 Grand Jury?

12 A. No.

13 Q. Prior to Judge Nixon's trial, did you meet with Wiley
14 Fairchild to prepare him as a witness?

15 A. Yes.

16 Q. Who was present?

17 A. To the best of my recollection, it would have been Mr.
18 Fairchild, Mr. Baltar, and Mr. Lawless of the FBI.

19 Q. As best you can recall, Mr. Weingarten, did you ever
20 meet with Mr. Fairchild without an FBI agent or another
21 attorney with you?

22 A. I don't believe so.

23 Q. Why not?

24 A. It was just my standard practice to not meet with
25 witnesses alone.

1 Q. Why?

2 A. Well, a lot of reasons. You want the FBI agent there
3 because he knows the case, he can help you. If there ever is
4 a dispute in what ensues, the FBI agent can provide -- can
5 serve as a witness.

6 Q. As far as Mr. Fairchild's testimony at trial was
7 concerned, what were you looking to get from him
8 testimonially?

9 Q. I wanted him to testify as he had done in the Grand Jury
10 about the mineral transfer to Judge Nixon.

11 Q. Which Grand Jury, July or November?

12 A. Both. The first Grand Jury testimony was helpful to the
13 Government in many respects. And, of course, we expected him
14 to testify about the telephone call.

15 Q. What kind of witness is Wiley Fairchild in your
16 estimation?

17 A. It's a complicated question. He's a difficult, older
18 man who can be very wilful, but I was satisfied on the eve of
19 Judge Nixon's trial that he was going to do his best to
20 testify truthfully.

21 Q. During the prep session of Mr. Fairchild for his
22 testimony, you said Mr. Baltar was there. Was he writing
23 anything down during that period of time?

24 A. Mr. Baltar frequently wrote things down and he was
25 taking notes at this session.

1 Q. What were you doing at this session and what was Mr.
2 Fairchild and Mr. Baltar, what was the conversation that was
3 going on at this session?

4 A. As I recall it, I met with Mr. Fairchild, there was some
5 expectation for Mr. Fairchild and for Mr. Baltar. But I put
6 Mr. Baltar through a rigorous cross-examination. I had no
7 intention of doing that. I recall conversations from Mr.
8 Baltar that he was extremely apprehensive about Mr. Fairchild
9 getting cross-examined by Michael Fawer. And there was a
10 suggestion from one or both of them that Mr. Fairchild use
11 one of his own lawyers to cross-examine him in preparation
12 for his testimony if I wouldn't do it. And following that I
13 prepared him generally, telling him areas that he could be
14 expected to have questions from me and from a cross-examiner
15 and that was -- that's what happened.

16 Q. Did you provide the answers that Mr. Fairchild was to
17 give?

18 A. No. But after each question, I'm sure there would have
19 been a discussion with me and with Mr. Fairchild. I could
20 have refreshed his recollection about what he testified to
21 before. I could have shown him the Grand Jury transcript or
22 the proffer or 302. It was, you know, a normal witness
23 preparation. My point was to provide him and provide Baltar,
24 who was taking this down, with information to take to an
25 attorney, so the attorney could make Mr. Fairchild

- 1 comfortable with an examination.
- 2 Q. Did you ever look at Mr. Baltar's notes?
- 3 A. No.
- 4 Q. Did he ever show you his notes?
- 5 A. Not that I recall.
- 6 Q. Did you ever review his notes with him?
- 7 A. I don't believe I did.
- 8 Q. I'd like to show you what's previously been admitted as
- 9 Petitioner's Exhibit 1. Did you ever see that document?
- 10 A. I think you showed it to me.
- 11 Q. Prior to the 2255 motion being filed in this proceeding,
- 12 have you ever seen that document?
- 13 A. I don't believe so.
- 14 Q. Had you ever seen handwritten notes of that document?
- 15 A. I don't believe so.
- 16 Q. Did you write the notes that this document comes from?
- 17 A. I don't think I wrote them. I think I'm responsible for
- 18 these questions. I think I posed the questions to Mr.
- 19 Fairchild and these obviously were recorded.
- 20 Q. That's the conclusion that you make; is that right?
- 21 A. Taking a look at this, I'm pretty sure I'm right.
- 22 Q. I'm asking you did you write the notes?
- 23 A. No. Oh, no.
- 24 Q. Prior to trial you're required to give what's known as
- 25 Jencks material; is that correct?

1 A. Correct.

2 Q. Files are gone through; is that right?

3 A. Sure.

4 Q. Was this ever in the Government's possession prior to
5 trial?

6 A. Not to my knowledge.

7 Q. Was a handwritten version of this ever in the
8 Government's possession prior to trial?

9 A. Not to my knowledge.

10 Q. And did you ever look at those notes at the time that
11 Mr. Baltar made them and approve them or in any way sanction
12 those notes after having reviewed them with Mr. Baltar?

13 A. I don't think I ever reviewed them. I think he was
14 taking the notes and I expected him to pass them along to a
15 lawyer.

16 Q. During the witness preparation session with Mr.
17 Fairchild, did the subject of how he should respond to
18 questions concerning the tape recordings made by Skip Jarvis
19 come up?

20 A. It may have.

21 Q. Did you instruct Mr. Fairchild how to respond to those
22 questions?

23 A. I didn't instruct Mr. Fairchild how to respond to any
24 inquiry other than to tell the truth.

25 Q. Specifically did you ask -- did you instruct him how to

1 respond to the Skip Jarvis tape questions?

2 A. No.

3 Q. Did the subject of Mr. Fairchild's FBI 302 Forms come up
4 during the course of this meeting?

5 A. It well may have. It was a routine witness prep.

6 That's all that I can tell you.

7 Q. Did you ever instruct Mr. Fairchild how he should
8 respond to questions he might get at trial on how to answer
9 the questions about the 302s and what he had told the FBI?

10 A. No.

11 Q. Did there ever come a time when you were called and
12 asked about Mr. Fairchild's status as a contractor on Federal
13 contracts?

14 A. That I was called?

15 Q. Called by either Mr. Fairchild, Mr. Baltar, Mr. Hess,
16 and asked about Mr. Fairchild --

17 A. There was a concern on their part that if he was a
18 felon, he would not be eligible for certain Government
19 contracts, yes.

20 Q. Did you ever make any representations or promises to him
21 that you would do anything in that regard?

22 A. My recollection is those conversations would have been
23 in context of a dismissal or a pardon.

24 Q. And that's all you said was what you've told us earlier?

25 A. That's right.

1 MR. COLE: Thank you, Mr. Weingarten.

2 CROSS-EXAMINATION BY MR. STEWART:

3 Q. Afternoon, Mr. Weingarten.

4 A. Afternoon, sir.

5 Q. I want to start at the point where Wiley Fairchild and
6 his representatives, as you testified today, initiated
7 conversations concerning a plea arrangement. Now, the
8 message you got -- did you speak to anybody before the
9 proffer on November 1, anyone representing Fairchild?

10 A. I thought I -- when I testified on The Hill I thought I
11 did. And I still have a recollection of doing that, but it's
12 not specific and my recollection has been refreshed about the
13 contact with Attorney General Pittman. So it could well have
14 been that the only contact I had was with Pittman.

15 Q. So you might have spoken to somebody like John Baltar or
16 Wallace Gunn, someone else?

17 A. Yes. Advising me that a proffer may have been held.

18 Q. And did you understand that --

19 A. And it could have been after the Pittman call and before
20 I got down to Mississippi.

21 Q. Did you understand from the information you had received
22 before that proffer that Wiley Fairchild was looking for an
23 outright dismissal of the charges against him?

24 A. Yes.

25 Q. Did you at that point ever make the response that an

1 outright dismissal of all charges was impossible or did you
2 let them think that was possible?

3 A. You know, since I don't have a fix on the conversation,
4 that would be impossible for me to answer. I mean, if you
5 want me to expand on my recollection I will, but it would be
6 beyond the question posed.

7 Q. You have no recollection of saying to them, dismissal is
8 so unusual in these circumstances after indictment that I
9 wouldn't, you know, this is not realistic?

10 MR. COLE: Your Honor, I think we're beating this a
11 little far. I think what should be done is does he remember
12 or does he not remember.

13 MR. STEWART: I'm asking him if he remembers.

14 THE COURT: Overrule.

15 Q. Do you remember saying something to that effect before
16 the proffer?

17 A. No. I could have said it -- I remember a conversation
18 after the pretrial motions in New Orleans and there was, as I
19 recall, exploratory conversations about a disposition.

20 Q. Do you recall with whom those were?

21 A. No. Whoever would have argued the pretrial motions on
22 behalf of Wiley.

23 Q. Does it refresh your recollection that it appears Mr.
24 Arendall argued those motions?

25 A. It could have been.

1 Q. Do you recall whether those conversations concerned an
2 outright dismissal?

3 A. I don't recall. I could well have said that it's not
4 likely that the Government would dismiss this case under any
5 circumstance. I just don't know.

6 Q. Do you recall that he was looking for an outright
7 dismissal?

8 A. Oh, yeah. There was no doubt.

9 Q. Do you recall ever making the statement before the
10 proffer that an outright dismissal would only be possible if
11 he could give you a "smoking gun"?

12 A. No.

13 Q. Now, was there -- had there been publicity about your
14 investigation by this time in late October of 1984?

15 A. Heavens, yes.

16 Q. Widespread publicity?

17 A. Widespread down here.

18 Q. In this area, I'm sorry.

19 A. Yes.

20 Q. In fact it was so bad there was a Gag Order entered by
21 sua sponte on Federal Representatives, wasn't there?

22 A. I remember Judge Parker issuing a Gag Order.

23 Q. Anybody who was reading newspapers in Mississippi
24 understood your investigation focused on Judge Nixon.

25 A. I'm not sure that's quite fair.

1 Q. Did you have any doubt in your mind that when Wiley
2 Fairchild's representatives approached you they understood
3 that you were looking for evidence against Judge Nixon?

4 A. I don't know what was on their mind. I certainly know
5 that what Baltar was trying to provide was a reason for us to
6 give Wiley immunity based on what he said Wiley could do in
7 connection with Judge Nixon and Bud Holmes, too. In
8 fairness, it was Holmes as well as Judge Nixon.

9 Q. Let's talk about the proffer meeting. You indicated
10 that it was not all on tape.

11 A. Correct.

12 Q. Do you recall how much of it wasn't on tape?

13 A. No. I tried to remember to this day. I flew down -- I
14 don't know if you want me to go beyond my question.

15 Q. That's fine. Do you remember it as a long meeting?

16 A. No. I can tell you what I remember but it would be
17 beyond your question.

18 Q. Okay. Do you remember it as -- I want to focus on --
19 there was a session off the tape before the tape began. I
20 want to focus on that. Was that a long time or a short time?

21 A. I don't think it was particularly long.

22 Q. Half hour?

23 A. I would just be guessing.

24 Q. How long were you on the tape?

25 A. I would just be guessing. I don't know. However long

1 the tape goes.

2 Q. And was there much conversation after the tape was
3 turned off?

4 A. Not that I recall.

5 Q. Let me show you what's been marked as Exhibit 12.

6 A. Yes, sir.

7 Q. Have you seen Exhibit 12 before?

8 A. Sure.

9 Q. What is it?

10 A. It's a transcript of the proffer.

11 Q. That transcript reflects that the tape recorded session
12 began at 4:00 p.m.; is that in accord with your recollection?

13 A. Those are my words, I'm sure that's what I --

14 Q. All right.

15 A. That's what I said.

16 Q. Do you recall whether this meeting began in the morning
17 or in the afternoon?

18 A. My recollection is Marshall and I flew down to Jackson.

19 I guess the plane records would reflect when we got here.

20 We rented a car or took a taxi, went into the FBI, and

21 eventually met with Mr. Fairchild and his representatives.

22 There would have been introductory conversation, we would

23 have shaken hands, we would have introduced each other.

24 There would have been some effort to figure out what Mr.

25 Fairchild was doing there, what he was going to say, and then

1 we would have taped it.

2 Q. I thought you testified earlier before the break that
3 Mr. Fairchild described what he was going to say before he
4 turned on the tape and then the tape was turned on.

5 A. That's what I meant to say.

6 Q. So you did hear what he was going to say once first?

7 A. That's my recollection.

8 Q. Did you interrupt his questions or did you just sit
9 there while he spoke right through?

10 A. I don't have a specific recall. I'm sure we would have
11 tried to clarify points. As I recall Mr. Fairchild was
12 nervous, he was unfamiliar with the procedures, and it took
13 awhile to get him to settle down and to focus in on what the
14 point of his exercise was.

15 Q. And he told you about the Preacher Shows allegation?

16 A. You know --

17 Q. This is off the tape.

18 A. I don't even know if he did that. I don't remember. He
19 may have, he may not have.

20 Q. Do you have any recollection as to what you said to Mr.
21 Wiley Fairchild on that occasion after he finished his
22 recitation, his initial recitation, that's not good enough to
23 get you a dismissal?

24 A. No.

25 Q. Or words to that effect?

1 A. No.

2 Q. There was no time in which -- was there any time in
3 which you said to him, this is the kind of testimony you're
4 going to have to give or that only makes sense on these
5 facts?

6 A. I don't recall doing that. I recall -- the initial
7 proffer and the proffer was fairly routine in the business
8 that I was engaged in. We wanted to meet with this man, see
9 what he had to say, and then we wanted to memorialize.

10 Q. Let me get more specific in a minute. At the time this
11 proffer ended and he left, did you think that Mr. Fairchild
12 had made a good faith effort to cooperate with the
13 Government?

14 A. Yes.

15 Q. Did that mean that he had told you everything he knew
16 about these affairs?

17 A. No. I wouldn't have come to that conclusion. I would
18 have wanted to spend more time with him to flush things out.
19 But I believe, as I recall back, that I was satisfied that
20 the man was trying his best.

21 Q. All right. And so you thought he was telling the truth
22 at that moment?

23 A. Well, I mean, he was trying his best to tell the truth.
24 I think he was nervous. I think he was unfamiliar with what
25 was going on. But I was satisfied he was making a good faith

1 effort.

2 Q. Do you recall at any time making comment to him, either
3 before the tape went on or after the tape went off, that he
4 was going to need to address the question of when Carroll
5 Ingram approached him concerning the investment with Judge
6 Nixon?

7 A. No.

8 Q. Do you recall telling him --

9 A. That was certainly an evidentiary point that would have
10 come up during the course of the investigation. But I don't
11 believe it came up then.

12 Q. Well, he testified in the first Grand Jury that it had
13 been before the bust of his son Drew, hadn't he?

14 A. I don't think that's right. I think he testified in the
15 first Grand Jury that he didn't remember. I think he said to
16 the FBI early on that it was before.

17 Q. Fine. I'll stand corrected there. That's fine.
18 Because of that, when he tells you then -- did he tell you in
19 the proffer that it was after Drew's bust when Carroll Ingram
20 approached him?

21 A. I'd have to see. If it's in here, it's in here. If
22 it's not, it's not. Perhaps you can help me.

23 Q. The top of Page 6. It begins on the bottom of Page 5.

24 Question from you: And you were about to start on the
25 time when someone came to you or Carroll came to you and --

1 Fairchild breaks in: And asks me to put Judge Nixon in
2 a deal. He said he had kids in school, in college, and he
3 was having a hard time. So I put him in a deal and I put him
4 in three different deals that I thought would pay off good
5 because I was scared not to. Although three months before,
6 my son had done his plea bargain with George. I'm getting
7 confused.

8 Do you remember that testimony now?

9 A. I'm sure that happened, it's recorded.

10 Q. Do you remember what he was saying during the proffer
11 was that it was after the approach? The approach came after
12 the drug bust.

13 A. I'm not sure that -- I mean -- I don't know if that's
14 reasonable to infer from that.

15 Q. All right. I'm not asking you to interpret the
16 document. I'm asking your recollection.

17 A. I don't remember. I don't remember.

18 Q. All right. Do you recall the point at which he said I'm
19 getting confused?

20 A. No.

21 Q. Do you recall there were points during the proffer when
22 he would just kind of trail off and get lost?

23 A. I think he was intimidated by the process. I think he
24 was unfamiliar with it. That's true.

25 Q. And did you attempt to prompt him or keep him moving?

- 1 A. Focus him in, sure.
- 2 Q. Do you recall any conversation before or after the tape
3 was on concerning whether the call from Bud Holmes' farm had
4 been placed by Judge Nixon rather than -- or by Bud Holmes?
- 5 A. No.
- 6 Q. Do you recall there was any conversation at that time
7 that the phone call from Bud Holmes' farm occurred before or
8 after Drew Fairchild's case was passed to the files?
- 9 A. No.
- 10 Q. Now, one purpose of this proffer meeting, this proffer,
11 was to see how Wiley Fairchild was going to change his
12 testimony, wasn't it?
- 13 A. Sure. Or add to it.
- 14 Q. Right. But one of the purposes, and you said it right
15 at the beginning, was to see how he was going to change the
16 testimony.
- 17 A. If I said it, I said it. It's not unfair.
- 18 Q. Well, it's on the first page here. Middle of the first
19 page: Let me begin by asking you generally what information
20 you have that might add to or alter your Grand Jury
21 testimony.
- 22 A. That's fair. Sure.
- 23 Q. Now, he then went into the description, the description
24 of the Preacher Shows incident, okay? And that proved not to
25 be anything that generated any criminal charges; is that

1 right?

2 A. Right.

3 Q. In fact, you determined that although he had alleged
4 that the case had been handled by Judge Nixon concerning
5 Preacher Shows' son, it turned out the case had not been in
6 front of Judge Nixon at all?

7 A. Right.

8 Q. He alleged that there had been a reduction in that
9 sentence for that person, Preacher Shows' son, and there had
10 been no such reduction?

11 A. In fairness to your question, he stated that he had
12 heard this from the father.

13 Q. And he had it wrong.

14 A. Well, I don't know if he was testifying incorrectly but
15 that's what he heard from the father.

16 Q. I understand.

17 A. There is a difference.

18 Q. The substance was incorrect.

19 A. I'm sure.

20 Q. Going back to Page 6 where we were before, where Mr.
21 Fairchild says he's getting confused and you then say no
22 that's true, that's true. So far so good. Do you recall why
23 you did that?

24 A. No. I mean, I can --

25 Q. Please don't speculate.

1 A. I can surmise.

2 Q. Was Wiley Fairchild having any trouble keeping straight
3 facts that had been provided to him by the Government in that
4 meeting?

5 A. No. The Government didn't provide him with any facts.

6 Q. At that taped proffer, Wiley Fairchild did not place the
7 phone call from Bud Holmes' farm as having occurred before
8 Drew's case was passed to the files, did he?

9 A. If you represent that, that's fine.

10 Q. Well, it's on Page 8, bottom of the page. It's a long
11 paragraph there describing it. And then he says I think it
12 was pretty close to the time it was passed to the files.

13 A. Okay.

14 Q. Did you understand that as saying it was before or
15 after, pretty close or that it was before?

16 A. At that point in time, I'm sure it wouldn't have
17 occurred to me to have been significant.

18 Q. So you have no recollection what you understood him to
19 be saying?

20 A. That's correct.

21 Q. Did you know at that time that the case had been passed
22 to files in December of 1982?

23 A. I'm sure I did.

24 Q. So did you conclude from this -- did you conclude when
25 you left that proffer that Wiley Fairchild had said that the

1 case had been -- that he had said the phone call from Bud
2 Holmes' farm had occurred in December of 1982?

3 A. I'm sorry.

4 Q. Did you conclude from the proffer that Mr. Fairchild had
5 just told you that the phone call from Bud Holmes' farm
6 occurred in December of 1982?

7 A. No.

8 Q. You did not believe that to be the case?

9 A. I don't think that's what he said. And I'm sure --

10 Q. I'm asking what you thought he said at the time.

11 A. The truthful answer is it wouldn't have occurred to me
12 to have been a significant connection at that point. I'm
13 sure that's not what I focused in on.

14 Q. I'd like to show you what's been marked as Petitioner's
15 Exhibit 20.

16 A. Yes, sir.

17 Q. It's an FBI document. You're welcome to review it all
18 but I'm going to direct your attention to a passage, see if
19 it refreshes your recollection. It's a statement at the
20 bottom of the second page -- I'm sorry. Bottom of the third
21 page, paragraph starting during the lengthy conference.

22 A. May I just see what this is?

23 Q. Sure. Please. Have you seen that exhibit before?

24 A. No, sir. I don't think I've ever seen this. Okay.
25 I've reviewed it.

1 Q. Does that refresh your recollection?

2 A. I've reviewed the paragraph that you said to.

3 Q. Does that refresh your recollection that anyone thought
4 -- whether you thought Mr. Fairchild had told you -- had said
5 that the phone call occurred in December of 1982?

6 A. No, sir.

7 Q. At the taped proffer do you recall whether Mr. Fairchild
8 had said that Judge Nixon had placed the call from Bud
9 Holmes' farm?

10 A. I don't recall.

11 Q. Would you look at that paragraph again and see if that
12 refreshes you?

13 A. I read it the first time.

14 Q. That doesn't refresh you?

15 A. Does he say in here? Frankly my recollection of what
16 Fairchild would have said at the proffer is limited to what
17 is on the tape.

18 Q. We'll just leave that there for now. I don't want to go
19 all through that.

20 He improved on that testimony in dating the call after
21 this proffer, didn't he?

22 A. I don't think he ever improved.

23 Q. Yeah. Instead of saying I think it was pretty close, he
24 said it was before the case passed to the files, the phone
25 call from Bud Holmes' farm.

1 A. My recollection is that that only became an issue at
2 Judge Nixon's trial, that the fundamental point of whether or
3 not the call was before or after the case being passed to
4 files is not something that anyone was particularly concerned
5 about back when the proffer was received or even for a long
6 time after that.

7 Q. You have no recollection of discussing that question
8 with Mr. Fairchild or Mr. Baltar in this time period at the
9 proffer?

10 A. I really don't. But I'm sure we would have been
11 interested in when he could tell us the phone call took
12 place. But the crucial association with the passing to the
13 files was not something I think that became a significant
14 point to us until Judge Nixon's trial.

15 Q. Let's explore this for a minute. The man tells you I
16 got this call from Bud Holmes and Judge Nixon. Okay. So
17 then you wanted to know what were they trying to get, what
18 were they telling you, what you were trying to get from
19 them. Didn't that go through your mind?

20 A. Sure.

21 Q. So you've got to link it up with some event out in the
22 world.

23 A. Sure.

24 Q. And the event you wanted to link it up with was Drew
25 Fairchild's case, wasn't it, because that's what Skip Jarvis

1 told you.

2 A. If it occurred, it doesn't deal with that possibility.

3 Q. Skip Jarvis had told you that Judge Nixon had been
4 bribed to fix Drew Fairchild's case; isn't that right?

5 A. He had a surmise. I think it was not even a surmise.

6 It was a speculation.

7 Q. All right. So then when he tells you there's this phone
8 call, the first thing you're going to think about is what
9 happened in Drew Fairchild's case; isn't that right?

10 A. True.

11 Q. And the one suspicious thing that happened in Drew
12 Fairchild's case that vibrated off the page was when it was
13 passed to the files.

14 A. True.

15 Q. So if you are a smart prosecutor, the first thing you
16 think about when you hear about this phone call is when did
17 it happen with respect to passing the case to the files in
18 Drew Fairchild's case, isn't it?

19 A. Sure.

20 Q. And that's what you thought.

21 A. It's one of the things that we focused on in an effort
22 to get Wiley Fairchild to accurately date the call.

23 Q. Okay. And you talked to him about that, didn't you?

24 A. At some point.

25 Q. All right. At the proffer.

1 A. That I don't recall. I may have.

2 Q. Mr. Pittman calls you two days before the proffer and he
3 says we've got this information about a phone call from Bud
4 Holmes.

5 A. Yes, sir.

6 Q. And you talk to Mr. Balter and Mr. Gunn before then.
7 You're riding down on the plane. Aren't you thinking, is
8 this the time they fixed it? Is this the time that they
9 arranged to have the case passed to the files?

10 A. I can't tell you what I thought about coming down on the
11 plane. My recollection in the proffer is really limited to
12 what's on the tape.

13 Q. Did you work with Weldon Kennedy in this case?

14 A. He was head of the FBI here in Mississippi.

15 Q. Did you find him a reliable agent to work with?

16 A. Yes, sir.

17 Q. How about Mr. White-Spunner?

18 A. Yes, sir.

19 Q. When they prepared memoranda of conversation, did you
20 find their memoranda to be accurate?

21 A. Generally.

22 Q. Did you find significant inaccuracies in their
23 renditions of witness statements?

24 A. If they interviewed a witness, I certainly would rely on
25 it. Yeah, sure.

1 Q. Let me move on to the next day. You met with Mr. Baltar
2 that day.

3 A. Yes, sir.

4 Q. I believe your testimony this morning or before lunch
5 was that he just showed up; is that right? Did I mishear
6 you?

7 A. I don't remember what the arrangement was that caused
8 them to come back to the FBI.

9 Q. Were other people present when you met with them?

10 A. I think Marshall was. I think Mr. Kennedy was.

11 Q. There were three of you there.

12 A. I think so.

13 Q. And you have no recollection that Mr. Baltar was asked
14 to come back?

15 A. No.

16 Q. Were you surprised when he turned up?

17 A. I don't recall being surprised.

18 Q. Wasn't it just a scheduled meeting to give them your
19 answer?

20 A. I don't know. I mean, there well may have been.

21 Q. And you said you told them that the proffer was not good
22 enough for immunity, correct?

23 A. My recollection.

24 Q. And you said that you did not tell them that the
25 Government would take a plea to the first count.

1 A. I don't have a specific recollection of doing that. I
2 mean, again, I'd have to fall back to what I think I would do
3 under those circumstances and I know you don't want that.

4 Q. I'm not asking about that. I want to try to refresh
5 your recollection again. I guess we'll use Exhibit 20
6 again. On the fourth page, the middle paragraph. Does that
7 refresh your recollection that a counteroffer was made on
8 that occasion?

9 A. It certainly suggests that there was one made. I don't
10 recall doing it but I will accept this.

11 Q. You would not expect Mr. Kennedy or Mr. White-Spunner to
12 mistake -- to hear a counteroffer where none had been made,
13 would you?

14 A. I would think that would probably be accurate. If I can
15 just amplify. My recollection is, shortly after this
16 meeting, Hess had contact with me and that's when the real
17 plea negotiations took place. And that's what causes me to
18 think that I would not have negotiated a plea.

19 Q. I'm not asking about what you would not have.

20 A. Okay. I'm sorry.

21 Q. Do you consider making a counteroffer to be a plea
22 negotiation? Isn't that a plea negotiation?

23 A. Could be interpreted as such.

24 Q. Was it your ordinary practice as a prosecutor to make a
25 plea bargain offer to an employee --

1 A. No.

2 Q. Of a witness who was --

3 A. No.

4 Q. Or of a subject who was not represented by counsel --
5 who was represented by counsel?

6 A. No. The relationship with Baltar was definitely
7 atypical.

8 THE COURT: Definitely what?

9 A. Atypical.

10 Q. Can you explain to me why the counteroffer was made to
11 Mr. Baltar if you were so wary of him?

12 A. We would have been eager to consummate a deal. Baltar
13 was there representing Fairchild. Fairchild was obviously
14 satisfied with Baltar being in that position. And we would
15 have communicated to Baltar to get the information to a
16 lawyer.

17 Q. You had met a lawyer the day before, hadn't you?

18 A. Sure.

19 Q. Let me just set the stage a little bit. Has Mr. Jarrett
20 got any serious responsibility in this investigation?

21 A. He's a very senior prosecutor who had significant
22 responsibilities in Mississippi and was generally aware --

23 Q. But he was working on other investigations at the time,
24 wasn't he?

25 A. Yes.

1 Q. He was not working on this investigation.

2 A. No.

3 Q. And he did not thereafter work on this investigation.

4 A. He worked on the investigation with the Petit Bois
5 matter.

6 Q. But not the Fairchild matter.

7 A. Right.

8 Q. You were the one who was in a position to authorize a
9 plea offer, weren't you?

10 A. Heavens, no. My superiors were.

11 Q. I understand. Of the people in Mississippi on that day,
12 Mr. Kennedy, Mr. Jarrett, and you, you were the guy who was
13 responsible for the case, the Wiley Fairchild case.

14 A. For the Justice Department, sure.

15 Q. Mr. Kennedy would not have made the plea offer.

16 A. Absolutely not.

17 Q. Mr. Jarrett, it wasn't his case.

18 A. He would have been authorized to, but he wouldn't. I
19 mean, he didn't.

20 Q. Was there ever a telephone toll record that the
21 Government thought placed the date of the call from Bud
22 Holmes' farm to Wiley Fairchild or the date of the meeting
23 between Judge Nixon and Wiley Fairchild?

24 A. Not that I know of.

25 Q. You never heard that; is that correct?

1 A. I heard it from Hess.

2 Q. I don't mean that. I mean, you had never heard that
3 before Mr. Hess told you.

4 A. I certainly asked the FBI to check it out to see if
5 there was one and they came back and said it's a local call.

6 Q. You have no recollection of ever telling that to Mr.
7 Hess?

8 A. No.

9 Q. I believe you testified that you did tell Mr. Hess at
10 the time before Wiley had entered his plea that there might
11 be circumstances, remote however they might be, under which
12 the charges against Wiley Fairchild might be dismissed.

13 A. I have a fairly clear recollection. I'll be happy to
14 share it with you.

15 Q. Could you answer my question first?

16 A. It's not exactly right. My recollection --

17 THE COURT: Go ahead and answer.

18 A. Hess basically said if it all goes well for you, will
19 these charges ever go away; and my answer would have been the
20 charges go away if we conclude that Wiley Fairchild didn't
21 commit crimes; they're not likely to go away because of what
22 the man said in the Grand Jury.

23 Q. But you never said to him that you could not even
24 discuss that possibility?

25 A. Oh, absolutely.

1 Q. Once the man pled guilty, it was over.

2 A. No.

3 Q. You didn't say that?

4 A. No.

5 Q. How were you going to fix it?

6 A. I wasn't going to fix it at all.

7 Q. I'm not using that in a pejorative term. Once the man
8 pleads guilty and it's entered, were you going to stipulate
9 to a withdrawal of the charges?

10 A. That's not unheard of, that's happened. If a prosecutor
11 comes to the conclusion at some point in time that the
12 charges that he brought and the conviction that he gained are
13 not merited by the facts, he has an obligation to do
14 something about it. That's basically what I said to Hess and
15 that's what I would have repeated down the road.

16 Q. You mean to their subsequent questions on the subject?

17 A. Yes.

18 Q. Did you tell Wiley or his representatives that you would
19 do what you could to help Drew?

20 A. To help Drew?

21 Q. Yeah.

22 A. I don't believe I did.

23 Q. You can't deny that you might have said that; is that
24 correct?

25 A. I have a recollection of that, too, and I can see how

- 1 someone hearing what I said to Hess perhaps could have
2 interpreted my words in a way of your suggestion. But I
3 never had an intention to do whatever I could to help Drew.
- 4 Q. What were your words?
- 5 A. Hess called me, said Drew is about to get --
- 6 Q. No, no. I'm not asking about that conversation.
- 7 A. I will do my best to see that the man is not punished
8 because of the cooperation with me.
- 9 Q. Mr. Weingarten, I'm not asking about that conversation
10 which is in March of '85.
- 11 A. Yes.
- 12 Q. And everything is breaking loose.
- 13 A. Right.
- 14 Q. I'm talking about before then. Any occasion before then
15 when you said to Wiley or his representatives that you would
16 do what you could to help Drew.
- 17 A. I don't believe so.
- 18 Q. Do you recall testifying to Congress in June that you
19 could not deny having done that?
- 20 A. If I said that I'm sure in my mind I was thinking about
21 the local prosecution issue.
- 22 Q. What's the -- you mean the --
- 23 A. Yes.
- 24 Q. Incident in March of 1980?
- 25 A. Yes.

1 Q. And you just didn't say that?

2 A. I don't know what I said. I mean -- you can show me if
3 you're impeaching me with it but I don't recall any
4 conversations about Drew Fairchild in the context of the
5 Federal Government doing something for him before the matter
6 arose with the State.

7 Q. At Page 126 on the first day of your testimony, question
8 at Line 3,100. I'll start on the previous page, Page 125.

9 I read to you from the declaration of Wiley Fairchild
10 and the statement there which begins at the top of the next
11 page, quote, Mr. Weingarten also stated on several occasions
12 in early 1985 that he would do what he could to help my --
13 I'm sorry, I misread that. That he would do what he could to
14 help my son Drew.

15 I asked: Do you have that here?

16 You answered: Yes.

17 I asked: Is that true?

18 You answered: I could easily have had conversations
19 with Wiley about Drew.

20 Was that accurate?

21 A. Sure.

22 Q. I don't have specific recollection about those occasions
23 and I know what I would have said to Hess and I know what I
24 would have said to Wiley. You think you have those
25 conversations before this March, 1985, episode with Barry

1 Hess?

2 A. I think --

3 Q. I'm going to keep going.

4 A. No. I think these are directed towards Drew's
5 predicament with the State.

6 Q. So you think you may have talked to Wiley during that
7 period when you were working on Drew's predicament with the
8 State?

9 A. No. That predicament continued through sentencing. I
10 could have had a conversation with him about Drew at any
11 point in time following that.

12 Q. Okay. So when you said on direct that you did not talk
13 to Wiley about Drew's situation, now it turns out maybe you
14 did.

15 A. I could have --

16 MR. COLE: I think he's mischaracterizing the
17 answer.

18 THE COURT: Let the witness go ahead. Mr.
19 Weingarten.

20 A. Would you repeat the question?

21 Q. My question is, and I won't ask it in an antagonistic
22 way: Did you talk to Wiley about Drew's problems?

23 A. I would have spoken to Wiley --

24 Q. Not would have. I'm sorry. I don't mean to be rude.
25 Please tell me what you did.

1 A. I don't think I spoke to Wiley Fairchild in the critical
2 time in March of '85, the only time I got involved in Drew's
3 case was as a prosecutor. On occasions when I spoke with
4 Wiley Fairchild, Drew would have come up. We would have
5 spoken about Drew.

6 Q. Did you talk to him about Drew?

7 A. I'm giving you my best answer.

8 Q. You believe you did?

9 A. I spoke to Wiley about Drew?

10 Q. Yes, sir.

11 A. Sure.

12 Q. Going on. I asked: I'm asking what you did say, okay?
13 Do you recall telling Wiley Fairchild that you would do what
14 you could to help his son Drew.

15 Answer was: No.

16 My question: Okay.

17 You said: I don't recall that.

18 Then I asked: Do you recall that you did not say that?

19 You answered: No.

20 And I asked: Can you deny it?

21 And you said: No.

22 So from that may we conclude that you simply cannot deny
23 that you may have told Wiley you'd do what you could to help
24 Drew?

25 MR. COLE: Your Honor, could he read the rest of

1 the page because this does go on and I think it's unfair to
2 impeach Mr. Weingarten on this without the rest of the
3 statement.

4 THE COURT: Read it.

5 Q. I said: Okay. It may have happened.

6 The answer is: My best recollection would have been
7 that in conversations with Fairchild representatives I would
8 have said the following that I will attempt to see to it that
9 Drew Fairchild is not punished solely for assisting the
10 United States. That's what they presented me.

11 My question was: Can you deny that you told Wiley that
12 you would do what you could to help Drew?

13 A. I don't deny it. I don't recall saying it. J

14 Q. I'd like to show you what's been marked as Exhibit 2.
15 This does not show the marking, but I will represent to you
16 it is Exhibit 2.

17 MR. COLE: No problem.

18 Q. Mr. Weingarten, I have only one question about that --
19 well, no, a couple of questions, I'm sorry. Do you recall
20 Exhibit 2?

21 A. Sure.

22 Q. That's a letter you wrote proposing a plea agreement?

23 A. I'm sorry?

24 Q. That's the letter you wrote incorporating the plea
25 agreement, correct?

1 A. I think it supplemented it.

2 Q. Yes.

3 A. In conjunction with it.

4 Q. It was part of the plea agreement. There's a statement
5 in there that Mr. Fairchild had made a good faith effort to
6 cooperate with the Government; do you have that?

7 A. Yes, sir.

8 Q. Did you believe that to be the case at the time?

9 A. Yes, sir.

10 Q. Had he provided you with additional information by that
11 -- what's the date on that, I'm sorry?

12 A. November 20.

13 Q. Had he provided you with additional information about
14 the phone call from Bud Holmes' farm and about the approach
15 from Carroll Ingram for the investment between the time of
16 the proffer on November 1 and the time of the letter on
17 November 20?

18 A. I don't recall.

19 Q. You don't recall that he supplemented his testimony?

20 A. He appeared in the Grand Jury soon thereafter.

21 Q. Yes, he did, eight days later. That's correct.

22 A. And he would have been -- there would have been
23 interviews of Wiley Fairchild in anticipation of that. I
24 don't know if it would have taken place between November 1
25 and November 20, only after.

1 Q. Let me ask you a question about that because I'm
2 concerned. Who interviewed him; do you know?

3 A. I'm sure it was me and agents.

4 Q. Did you take notes?

5 A. I don't recall. Probably.

6 Q. Did the agents take notes?

7 A. I don't know.

8 Q. Did you destroy all your notes from this case?

9 A. Not deliberately.

10 Q. Is that your ordinary practice to destroy all the notes
11 you've taken at witness interviews?

12 A. Frequently, sure. If I just take a scribble or
13 something and it's pointless or memorialized later, I won't
14 keep the scratch pad.

15 Q. We've never gotten any discovery in this proceeding or
16 any other proceeding --

17 MR. COLE: Your Honor, I don't think he needs to be
18 asking Mr. Weingarten about this.

19 THE COURT: What's the question?

20 MR. STEWART: My question is simply does he have
21 any explanation why there have been no notes of these
22 interviews.

23 MR. COLE: Your Honor, I think he's given it.

24 THE COURT: I think I understand why as a lawyer
25 and Judge. I don't know what's puzzling you.

1 MR. STEWART: I'll move on.

2 Q. Part of the plea offer you made at that time to Wiley
3 Fairchild was that if his cooperation was satisfactory to
4 you, you would recommend no jail time?

5 A. Right.

6 Q. And at that time I think you just alluded to it, you
7 expected him to go back before the Grand Jury?

8 A. Correct.

9 Q. And at that time, his Grand Jury appearance, you would
10 gauge the quality of his cooperation; would you not?

11 A. That would be one occasion when that would happen.

12 Q. Okay. Now, you have no recollection of encouraging Mr.
13 Baltar to prepare Wiley Fairchild for that Grand Jury
14 appearance.

15 A. I would have encouraged Fairchild to prepare himself for
16 the Grand Jury appearance. If Baltar was there or if
17 Fairchild representatives were there, I would have encouraged
18 everybody to work as hard as they possibly could to make sure
19 his testimony was as complete and truthful as possible
20 because it was now on the record under oath.

21 Q. So if Mr. Baltar and Mr. Fairchild are standing there
22 would you, let's say at this plea entry, you're saying that
23 you may well have said to them you got to prepare for the
24 testimony?

25 MR. COLE: Your Honor, I think again, we're getting

1 into speculation.

2 THE COURT: Sustained. Start over, Mr. Stewart,
3 please.

4 Q. Do you recall telling Mr. Baltar and Mr. Fairchild when
5 they were together at any time that Mr. Fairchild ought to
6 prepare for his Grand Jury testimony?

7 A. I don't have a specific recollection but it's entirely
8 possible that I did.

9 Q. Do you have any recollection of reviewing with them the
10 matters you were going to question him about in the Grand
11 Jury?

12 A. No. I mean, I'm sure I did it. I don't have a fix on
13 that meeting.

14 Q. So you have no recollection then of discussing with him
15 the value of the mineral interest?

16 A. I'm sure I did.

17 Q. Do you have any recollection of discussing with him the
18 dating of the phone call from Bud Holmes' farm at that time
19 before his second Grand Jury appearance?

20 A. If I said I have a specific recollection I wouldn't be
21 telling the truth. I don't.

22 Q. You have no recollection of discussing when the approach
23 from Carroll Ingram came for the investment; is that correct?

24 A. If all those things appear in the second Grand Jury, I'm
25 sure I had conversations with them about them.

1 Q. Do you recall whether you ever reviewed those matters or
2 -- strike that. Never mind.

3 At this time before the second Grand Jury appearance,
4 did you give to Mr. Baltar an outline of the examination you
5 intended to go through when he was before -- when Mr.
6 Fairchild was before the Grand Jury?

7 A. I don't think so.

8 Q. I'd like to show you two sheets of paper that come from
9 the files of Fairchild Construction Company and just ask if
10 they refresh your recollection.

11 MR. COLE: Your Honor, I've never seen these
12 before.

13 THE COURT: Mark it 22 just for identification.

14 MR. STEWART: Let's make it 22 and 22-A, they're
15 separate sheets.

16 (Exhibit No. 22 & 22-A marked.)

17 Q. Do Petitioner's 22 and 22-A refresh your recollection as
18 to whether you ever gave Mr. Baltar or Mr. Fairchild an
19 outline of the examination you intended to follow with Mr.
20 Fairchild?

21 A. This is definitely my writing. And if Baltar or Wiley
22 had it, then I clearly gave it to them.

23 Q. Do you recall the occasion on which you gave it to them?

24 A. No. It could have been before his Grand Jury so that he
25 had some idea what would be asked. Could have been on

1 another occasion.

2 Q. You don't recall whether that was requested or whether
3 you volunteered to provide that?

4 A. It could have been either.

5 Q. I'll move on. I just want to make sure you have no
6 current recollection at this moment on the occasion on which
7 you prepared those?

8 A. I could guess that --

9 Q. No, no. I'm really not asking for this.

10 A. It would either be before his Grand Jury or his trial
11 testimony.

12 Q. It's before one of his testimonial appearances.

13 A. I would think so, yes.

14 Q. And it certainly wasn't before his first Grand Jury.

15 A. No.

16 Q. Did you ever show -- do you recall ever showing Mr.
17 Baltar an outline of how Mr. Baltar ought to prepare a study
18 sheet for Mr. Fairchild before his Grand Jury appearance?

19 A. I'm sorry?

20 Q. Do you recall ever advising Mr. Baltar or Mr. Fairchild
21 on how to prepare an outline that he could study to prepare
22 for his Grand Jury appearance?

23 A. I could have said, do your level best to write down
24 whatever information you can that would help you prepare for
25 your testimony. If you can fix things, sure. I mean, that

1 would have been a routine thing for me to do.

2 Q. Let me show you this document also from the Fairchild
3 records.

4 MR. STEWART: I'm marking it as Exhibit 23.

5 (Exhibit No. 23 marked.)

6 Q. That is simply a xerox. Is that your handwriting also?

7 A. Yes, sir.

8 Q. Does that refresh your recollection that you started to
9 give either Mr. Fairchild or his representatives a model as
10 to how they should prepare a study sheet for Mr. Fairchild?

11 A. No. That could well be. I think it's more likely that
12 we were trying to figure out the chronology and trying to put
13 things in proper order. And I would have scribbled this
14 down.

15 Q. I'm showing you what's been marked as Exhibit 18. My
16 question simply: Have you ever seen that before?

17 A. I'm not sure. I may have.

18 Q. Take your time.

19 A. I think this is a document prepared by Fairchild or
20 Fairchild people trying to put together a chronology.

21 Q. Do you recall when you saw it?

22 A. No. I think early. Early in my relationship with
23 Fairchild.

24 Q. Early in your negotiations with them or prior to --
25 before his second Grand Jury appearance?

1 A. I don't know.

2 Q. Okay. Do you recall any comments or discussions you may
3 have had with Mr. Fairchild or his representatives concerning
4 Exhibit 18?

5 A. I'm sure that I would have gone over every act in the
6 chronology. They all seem to bear upon the case.

7 Q. Do you recall advising them on what entries should be
8 made?

9 A. No. I'm sure I would have said put down stuff that's
10 relevant, put down when you did certain things with these
11 transactions.

12 Q. And that, of course, would include specific events. You
13 wouldn't just say generally.

14 A. Sure.

15 Q. Did you encourage Mr. Fairchild to review that Exhibit
16 18?

17 A. I don't recall that but I well may have.

18 Q. Mr. Fairchild's second Grand Jury appearance, November
19 28 of 1984; do you recall that?

20 A. Sure.

21 Q. And it went very smoothly, didn't it?

22 A. I don't know what you mean.

23 Q. It's a short transcript, it's 32 pages. Direct at trial
24 took much longer. I'm just curious. Did you think it went
25 smoothly?

1 A. I don't have a recollection if he stumbled or if he had
2 problems.

3 Q. And his testimony in that second Grand Jury was a lot
4 more precise and a lot more specific on points concerning
5 dates and when things happened than they had been during the
6 proffer, wasn't it?

7 A. I'm not sure. It may well have been.

8 Q. You had polished and buffed him up pretty good by then,
9 hadn't you?

10 MR. COLE: Objection, Your Honor.

11 A. I don't consider that buffing.

12 THE COURT: Overrule. Let it stand.

13 Q. Let me switch to Drew Fairchild for a minute.

14 A. Yes, sir.

15 Q. You did have Mr. Drew Fairchild before the Grand Jury as
16 a witness as well, didn't you?

17 A. I think we did, sure.

18 Q. And you understood -- didn't you understand that Wiley
19 wanted you to help Drew?

20 A. Let me -- did I understand Wiley wanted -- in a way,
21 yes.

22 Q. Now, you've described that you got word that Judge
23 McKenzie had stated that he would not respect the plea deal
24 that Bud Holmes had negotiated with Drew Fairchild?

25 A. Yes, sir.

1 Q. And that plea deal had guaranteed no jail time for Drew
2 Fairchild, correct?

3 A. Yes, sir.

4 Q. Now, didn't you tell Glenn White that you would come to
5 State Court to speak on Drew's behalf in order to try to save
6 that sentence?

7 A. To save the sentence?

8 Q. To save the deal, excuse me.

9 A. No. I mean, I --

10 Q. Maybe I've overstated it. Did you tell Glenn White you
11 would come to speak to the State Court concerning Drew's
12 cooperation on the occasion in which the plea bargain was to
13 be dealt with by the State Court?

14 A. You showed me that subpoena in Congress. I have no
15 recollection of that.

16 Q. That's a different subpoena. I'm talking about an
17 earlier occasion.

18 A. I would have said to Glenn White that I would make the
19 local Court aware of Drew's cooperation. I don't believe I'd
20 go beyond that.

21 Q. You don't recall that you told him that you would come
22 and appear personally?

23 A. I don't recall saying that. I would have gone to the
24 State Court.

25 Q. But all you ended up doing was sending the letter?

1 A. Right.

2 Q. Had Wiley or any of his representatives asked you to
3 make that appearance in State Court or assist in the State
4 Court matter at that time? This is before Mr. Hess calls.

5 A. Hess must have asked me for the letter. That's my best
6 recollection of it.

7 Q. Do you know when Mr. Hess began to represent Drew
8 Fairchild?

9 A. No.

10 Q. Do you recall testifying in Congress that sometimes you
11 couldn't tell who Mr. Hess was actually speaking for, whether
12 it was Wiley or Drew?

13 A. If you say that I said it, I'm sure I did.

14 Q. All right. Do you recall Mr. Hess then at some point
15 after the plea bargain was withdrawn or voided, Mr. Hess did
16 call you and initiate conversations about Federal
17 prosecution, correct?

18 A. Yes.

19 Q. All right. Do you recall that he asked you to indict
20 Drew Fairchild?

21 A. I remember the conversation we had on The Hill. I don't
22 specifically remember that. My recollection of it is that he
23 got to the point where he wanted the Federal Government to
24 handle the case which meant indictment. So I think we're
25 saying the same thing.

1 Q. He told you Drew would plead guilty to a Federal charge?

2 A. Sure.

3 Q. And you understood that Mr. Hess wanted the Federal
4 indictment to try to shut down the State prosecution?

5 A. Yes.

6 Q. Didn't you tell him that you would make no sentencing
7 recommendation at Drew's sentencing?

8 A. Sure.

9 Q. And you told him this before the indictment came down,
10 correct?

11 A. Sure.

12 Q. So now he tells you that Drew's going to plead guilty
13 and you've told him that you won't make a sentencing
14 recommendation, correct?

15 A. A specific sentencing recommendation. That I'd be free
16 to say whatever I wanted. I reserved that, but I wouldn't
17 ask for a specific sentence.

18 Q. You wouldn't ask for any specific time.

19 A. Wait a minute. That may well be. I don't remember
20 that. I remember it is that no holes barred. I could say
21 whatever I wanted at sentencing. But I may have added that I
22 won't ask for a specific sentence because I never do. That's
23 a freebie for me. I don't remember saying it to him but I
24 could have.

25 Q. Okay. Let's see where we are. You may have told them

1 that you would not make a sentencing recommendation.

2 A. That I wouldn't ask for a specific amount of time.

3 Q. All right.

4 A. If he says I did, I'm sure I did.

5 Q. I'm not going to try to set him against you here. Does
6 that mean that you were not going to ask for time?

7 A. No. That's the point. I mean, if I simply said I'm not
8 going to ask for a specific amount of time that does not tie
9 my hands to ask for jail time.

10 Q. You can say Your Honor, send this man to jail for
11 awhile.

12 A. That incarceration is appropriate. I've frequently done
13 that.

14 Q. And just nothing more?

15 A. Right. Absolutely.

16 Q. And that was your intention in what you said?

17 A. No, no. I'm not suggesting that was. But there's a
18 difference between telling a lawyer that you're not going to
19 ask for a specific sentence and reserving the right.

20 Q. Let me get away from the general to the specific. Were
21 you telling Mr. Hess that you were not going to make any
22 specific recommendation for time for Drew Fairchild?

23 A. I don't have a specific recollection. My best
24 recollection is I have no encumbrances at all with Drew
25 Fairchild.

1 Q. I wanted to ask you about -- it's been marked as Exhibit
2 5, that's the prosecution memo Mr. Cole asked you about. I
3 want to try to clarify your testimony on direct.

4 A. Yes, sir.

5 Q. That's an important document, isn't it?

6 A. Pros memos are important.

7 Q. They're not trivial.

8 A. Absolutely not.

9 Q. It's a serious matter to bring -- to recommend an
10 indictment.

11 A. Most assured.

12 Q. All right. I think you indicated you couldn't tell if
13 those were your initials on the front.

14 A. I don't know if I wrote them or Jan wrote them.

15 Q. Would you ever let a prosecution memo go to your
16 superiors with your name on it that you had not reviewed and
17 approved?

18 A. I don't think I ever -- I don't think there's a
19 prosecution memorandum other than this one in all my years
20 that I didn't write.

21 Q. That wasn't my question.

22 A. So the answer is if I wrote it then --

23 Q. I understand. Your testimony on direct was since Drew
24 Fairchild was going to plead guilty anyway, this wasn't such
25 a big deal.

1 A. It was an unusual situation. I would have discussed it
2 with my superiors before this pros memo was submitted. I had
3 every reason to believe that the prosecution was going to be
4 authorized. I mean, frankly, that's why Jan wrote it.

5 That's why it's three pages. Most pros memos are 50 pages.

6 Q. It's a pretty serious matter, though, to take a case
7 away from the State Courts which is what you were proposing
8 to do here.

9 A. It was an unusual step. That's for sure.

10 Q. And you understood that it was Justice Department policy
11 at this time to encourage State prosecutors to take on this
12 kind of case if they were willing to, take one away was a
13 serious step.

14 A. There was definitely a policy at the Justice Department
15 to share the spoils with the States.

16 Q. On how many other occasions are you aware of the Justice
17 Department coming in four years after an indictment in State
18 Court and taking a case away?

19 MR. COLE: Objection, Your Honor. I don't see how
20 that is relevant to this at all.

21 THE COURT: Sustained.

22 Q. Have you had a chance to review the entire memorandum,
23 Exhibit 5?

24 A. No, not really.

25 Q. Let me direct your attention to the top of Page 3.

- 1 A. Yes, sir.
- 2 Q. Statement at the top, No. 2: Drew was unlikely to get a
3 fair trial or sentence in the State system, given that both
4 the DA and the Judge are friendly with and we believe
5 controlled by Bud Holmes. Is that an accurate statement of
6 your views at that time?
- 7 A. I think that's an overstatement, but I don't know
8 exactly what I thought at that point. I don't remember what
9 stage my conversations with Glenn White were in. I was
10 satisfied eventually from Glenn White that the reason that
11 McKenzie was not going to accept a deal was not corrupt.
- 12 Q. Did you ever have any evidence that the reason that he
13 was not going to accept a deal was corrupt?
- 14 A. Well, on its face --
- 15 Q. Evidence.
- 16 A. There were circumstances that caused me to be very
17 concerned.
- 18 Q. Led you to believe that the State Criminal Justice
19 System was out to crucify Drew Fairchild?
- 20 A. The only thing that had changed in the five years since
21 Drew got his deal was that he was cooperating with the
22 Federal Government. For five years the man thought he was
23 going to get no time. All of a sudden he was looking at 10
24 or 15 years. That caused us to be concerned.
- 25 Q. Hadn't the entire agreement been subject to

1 investigation by the Federal Government at that time?

2 A. Well, the entire case had been subject to investigation.

3 Q. That had changed, too, hadn't it?

4 A. But Drew's conduct hadn't changed. From day one, it was
5 clear that he was involved in the smuggling operation.

6 Q. My next question. He was involved in that smuggling
7 operation. No question about that.

8 A. None.

9 Q. And what had the State Criminal Justice System done to
10 him for those four years until the time of this prosecution
11 memo?

12 A. Took a plea. Promised him no time. And sat on it.

13 Q. Was that unfair to Drew? Had the State system done
14 anything unfair to Drew at this point?

15 A. No. Unfair in the sense I'm not sure it was an
16 appropriate deal.

17 Q. It was too lenient.

18 A. Yes. Early on.

19 Q. So does that mean that you think perhaps Judge McKenzie
20 was correct not to accept that plea agreement?

21 MR. COLE: Objection, Your Honor.

22 THE COURT: I don't want to get into that. I'll
23 sustain the objection.

24 Q. You had not even indicted Bud Holmes at the time of this
25 memorandum, had you?

1 A. It was coming right up.

2 Q. Okay. But you hadn't done it yet.

3 A. No.

4 Q. All right. And you hadn't even told Bud Holmes that he
5 was going to be indicted.

6 A. I don't know. Probably not. I probably would have told
7 him right before he was indicted.

8 Q. Recall testifying about that being two days before?

9 A. Yes. Right.

10 Q. Let's look at the next paragraph, Statement No. 1:
11 Ironically our indictment of Drew would be a favor to him and
12 it is not in our interest to appear to be helping him too
13 much when he is our witness.

14 Is that an accurate statement of your views that it was
15 a favor to Drew to indict him in Federal Court?

16 A. To the extent that it was going to work out better for
17 him than in State Court, sure.

18 Q. And was it an accurate statement of your views that it
19 was not in your interest to appear to be helping Drew too
20 much, that you needed to conceal that? /

21 A. No, that's not fair.

22 MR. COLE: Objection, Your Honor.

23 THE COURT: I'll sustain the objection. Rephrase
24 the question.

25 Q. Is it an accurate statement of your views that it was

1 not in your interest to appear to be helping him too much?

2 A. It would not have occurred to me to think like this or
3 to put this down. It's there and I signed it.

4 Q. Why do you say it would not have occurred to you?

5 A. Any arrangement with Drew Fairchild was going to be
6 public. If he ever took the stand, as he did at Judge
7 Nixon's trial, he was going to be cross-examined about it. I
8 think this is basically irrelevant.

9 Q. Did you know at the time the decision was made to
10 prosecute Drew Fairchild in Federal Court that Wiley
11 Fairchild wanted you to do that?

12 A. I wouldn't have known it directly. I would have assumed
13 it. I would have assumed it. That's my best answer.

14 Q. Okay. Can you not say whether you knew it or not?

15 MR. COLE: Objection, Your Honor. This is
16 getting --

17 THE COURT: Sustained.

18 Q. Was it an accurate statement of your beliefs at the top
19 of that memorandum that the failure to indict Drew Fairchild
20 could jeopardize your investigation?

21 A. The failure to indict Drew?

22 Q. Could jeopardize your investigation.

23 A. If it was perceived that he would have cooperated with
24 the Federal Government and got punished for it, yes.

25 Q. Were you concerned that Wiley or Drew Fairchild were

1 going to change their testimony?

2 A. No.

3 Q. Had you ever seen Wiley Fairchild change his testimony
4 -- let me strike that.

5 Had Wiley Fairchild changed his recollection and his
6 description to you of the events involving the investment
7 with Judge Nixon and the contact with Bud Holmes over the
8 time that you knew him?

9 A. Yes.

10 Q. And you had no concern that he would change his
11 testimony back?

12 A. My concern always was that the man perceived the world
13 in the way that he felt obligated to do his best to tell the
14 truth. That was my concern with him. And it was my concern
15 from day one with Wiley Fairchild.

16 Q. I'm asking: Were you concerned that he was going to
17 change his testimony back from the way it ended up in the
18 second Grand Jury appearance to the way it had started out?

19 A. No.

20 Q. I'd like to show you Petitioner's Exhibit 7, a letter
21 from you --

22 THE COURT: Isn't Wiley Fairchild -- wasn't he the
23 kind of a witness who if he was testifying for Weingarten or
24 for Stewart or for A or B, he'd create a heart attack in a
25 lawyer from time to time, wouldn't he?

1 A. I certainly learned that at Judge Nixon's trial.

2 THE COURT: That's hindsight, I guess, for me.
3 Isn't that about right, Mr. Stewart?

4 MR. STEWART: I'm not sure that I'm in a position
5 to answer that at this point.

6 THE COURT: Okay.

7 Q. Do you recognize Exhibit 77

8 A. Yes, sir.

9 Q. Do you recall writing that response to Mr. Fawer's
10 discovery request?

11 A. Yes, sir.

12 Q. And is it an accurate statement at the beginning of it
13 that you had reviewed all your files before you wrote that?

14 A. Sure.

15 Q. The statement there was that you reviewed your files to
16 insure that there were no other favors or deals given to
17 him. That's accurate?

18 A. Sure.

19 Q. And you didn't -- well, have you had a chance to look at
20 the letter?

21 A. No. Do you want me to read it?

22 Q. No, let's skip that for now.

23 Was it your preference after Wiley Fairchild pled guilty
24 that he be sentenced after the Nixon trial?

25 A. No.

1 Q. You recall no occasion on which you said that to anyone
2 connected to Wiley Fairchild?

3 A. I don't recall it and in my long-standing practice as a
4 prosecutor was to get cooperating witnesses sentenced before
5 trial.

6 Q. And you have no recollection of ever discussing with Mr.
7 Fairchild -- well, no, strike that.

8 Let me inquire about the question of his potential
9 disqualification from Federal contracts.

10 A. By the way, I think Mr. Hess is the one who wanted the
11 sentencing pushed off. I don't know if that's responsive.

12 Q. I was asking about the Federal contracts.

13 A. Go ahead.

14 Q. What was your response when the question was raised?
15 Was that raised in the -- let me ask a different question,
16 I'm sorry.

17 Was the question raised in the context of the pardon as
18 well?

19 A. Yes.

20 Q. So they were all mixed together in your conversation?

21 A. Yes.

22 THE COURT: HUD contracts?

23 MR. STEWART: Yes, sir.

24 Q. So the issue of the pardon also concerned the issue of
25 eligibility for Federal contracts.

1 A. He didn't want a felony on his record.

2 Q. That was another reason why he didn't want it on his
3 record.

4 A. Yes.

5 Q. And --

6 THE COURT: That had precipitated or do you know?
7 Is the discussion about pardons that he was applying for
8 contracts in his name, I guess, or his corporation's name
9 learned that a conviction for a felony to disqualify him and
10 brought the subject up, or is that something out of your area
11 of knowledge?

12 A. I just remember the conversations including both. I
13 don't know which one precipitated which one.

14 THE COURT: Excuse me, Mr. Stewart.

15 Q. And there were frequent occasions on which the question
16 of pardons was discussed?

17 A. More than once, yes.

18 Q. In your congressional testimony, Pages 116 and 117, you
19 said frequently.

20 A. I said that.

21 Q. You accept frequent as to how often it was?

22 A. I'd just be guessing at how many times.

23 Q. You knew Wiley wanted a pardon?

24 A. Wiley wanted his felony removed.

25 Q. And you know he wanted you to help.

1 A. Yes.

2 Q. And when he raised the subject of pardons or the people
3 working for him raised the subject of pardons you never said,
4 listen, I just can't talk about that with you?

5 A. I told him straight what the situation was.

6 Q. But you never gave him that answer?

7 A. No.

8 Q. And by describing that situation you made it clear to
9 him, didn't you, that any request for a pardon would end up
10 on your desk?

11 A. Not in the sense that I would be the decision maker. A
12 fact provider, yes.

13 Q. And one of the facts that you would provide was the
14 extent of his cooperation and the quality of his cooperation;
15 isn't that right?

16 A. Yes.

17 Q. So when he took the stand at the Nixon trial he knew
18 that the road to a pardon ran right through your desk?

19 MR. COLE: Objection, Your Honor. I think that's a
20 characterization.

21 THE COURT: I'll sustain the objection.

22 Q. When was the last time John Baltar asked you for help in
23 getting Wiley Fairchild a pardon?

24 A. I had a strange conversation with Baltar within the last
25 month.

1 Q. Within the last month?

2 A. Yes.

3 Q. Did he request a pardon on that occasion?

4 A. No, he called me up --

5 Q. My question was about a pardon.

6 A. This was about a pardon.

7 Q. I'm sorry I thought you said it wasn't.

8 A. No, it was.

9 Q. All right.

10 A. He called me up and said I'm coming to Washington. I
11 want to get the pardon process started. This was after the
12 2255 had been filed. I thought it was an incredibly strange
13 thing for him to do. I said to him: As I told you before,
14 John, there's a pardon attorney, there's a formal procedure,
15 I can be of no service to you. I'm not quoting -- all I
16 wanted to do was hang up the phone.

17 Q. But you think this was in the last month?

18 A. It was after the 2255 was filed and after the Baltar
19 affidavit was shown to me.

20 Q. That was filed in March, sometime between then and now.

21 A. Yes.

22 Q. All right. So he was still seeking a pardon on behalf
23 of Wiley Fairchild?

24 A. I think he was basically trying to illicit something
25 from me that could be used against me is what I think he was

- 1 doing.
- 2 Q. How many times did you meet with Wiley Fairchild
- 3 altogether, and I'm not asking for a precise number but in
- 4 the neighborhood, to discuss his testimony?
- 5 A. Me personally or the Government?
- 6 Q. Start with you personally.
- 7 A. Ten. On every occasion of his testimony? I mean, in
- 8 every instance where I ever met with Wiley Fairchild and
- 9 discussed testimony?
- 10 Q. Yes, sir.
- 11 A. It would be a guess. Ten, eight, something like that.
- 12 Q. Did you meet with him to discuss his testimony between
- 13 the time that the proffer and the time of his second Grand
- 14 Jury appearance? The proffer is November 1, the second Grand
- 15 Jury is November 21.
- 16 A. Sure.
- 17 Q. More than once?
- 18 A. Perhaps. I'd have to check. I don't know. It could
- 19 have been. I think he pled --
- 20 Q. November 26.
- 21 A. I probably met with him after his plea in New Orleans
- 22 and I probably met with him right before he testified in the
- 23 Grand Jury.
- 24 Q. Do you recall meeting with him before the Bud Holmes
- 25 trial was scheduled to prepare him then?

1 A. I don't recall it. I may well have.

2 Q. Then before the Nixon trial again?

3 A. Sure.

4 Q. Meet him more than once before the Nixon trial to
5 discuss his testimony?

6 A. I may have. I don't know. I may have met him in the
7 Federal Building. I may have met him in his office.

8 Q. And were there occasions on which he was interviewed by
9 Federal agents concerning his testimony when you were not
10 present?

11 A. Yes.

12 Q. In addition to the eight or ten that is your best --

13 A. Early on he was interviewed three or four times.

14 Q. I don't mean at the beginning of the investigation back
15 in April of '84.

16 A. There may have been occasions when I would ask the FBI
17 to go pick something up. There probably were occasions when
18 Fairchild met with the FBI absent of me.

19 Q. Were there occasions that you can recall where you
20 talked to John Baltar outside of Wiley's presence concerning
21 Wiley's testimony?

22 A. I don't have specific recollections. There would have
23 been occasions when I would have spoken with Baltar outside
24 of Wiley's presence. I could have said how's Wiley doing,
25 what's Wiley doing. We could have had conversations that

- 1 would have spilled over into substance.
- 2 Q. Do you recall on these eight to ten sessions you had
3 with Mr. Fairchild --
- 4 A. And that's a guess.
- 5 Q. I understand. But it's more than one or two.
- 6 A. Yes.
- 7 Q. And it's fewer than 30.
- 8 A. Oh, yes.
- 9 Q. Did you talk to Mr. Fairchild about when the phone call
10 had occurred from Bud Holmes' farm?
- 11 A. Sure.
- 12 Q. Come up everytime?
- 13 A. Probably not, but I'm sure --
- 14 Q. Often?
- 15 A. It was discussed.
- 16 Q. Do you recall if it was discussed before the second
17 Grand Jury appearance?
- 18 A. I don't recall. But if there's testimony in the second
19 Grand Jury -- and I probably haven't reviewed the second /
20 Grand Jury in a very, very long time -- I'm sure it was
21 discussed. Whatever came up in the second Grand Jury would
22 have been discussed before.
- 23 Q. Let me ask you about that event, the passing -- when the
24 phone call occurred, the date. Do you recall making the
25 representation that you thought that it occurred in late

1 1982?

2 A. I've been asked that a million times. I think my
3 position has always been my best estimate of when it would
4 have taken place would have been the fall of '82.

5 Q. Didn't you try --

6 THE COURT: Fall of '82?

7 A. Yes.

8 Q. Didn't you try to get Wiley Fairchild to say that?

9 A. I certainly wouldn't have tried to coerce him into
10 saying it. I would have tried to lay out all the facts and
11 circumstances that would have caused me to so conclude. Many
12 of them provided by him.

13 Q. So you would sit down with him and lay out all the facts
14 and circumstances that you thought indicated that phone call
15 had to be in the fall of 1982, and you would sit back and say
16 what's the answer, Mr. Fairchild?

17 A. No, that's not the way I would operate.

18 Q. He never did say that it was in the fall of 1982, did
19 he?

20 A. I don't remember.

21 Q. Don't you remember that he was never able to put a date
22 on that?

23 A. Yes.

24 Q. Don't you remember that everytime you asked about it you
25 had to ask him what happened next? You'd ask him when --

1 you'd ask him about the phone call and then you'd say what
2 happened next?

3 A. Surely in the course of having conversations about the
4 evidence with Wiley Fairchild we would try to get things in
5 chronological order.

6 Q. Okay. Do you recall that in the second Grand Jury you
7 asked him about the phone call and then your next question
8 was what happened next; do you recall that?

9 A. I don't, but if it says it, I'm sure I said it.

10 Q. This is the second Grand Jury, Page 20, Line 4. And
11 you've just covered the phone call.

12 The question is: Okay. In terms of Drew's case, what
13 was the next thing that happened after this conversation you
14 had with Judge Nixon and Bud Holmes?

15 Answer: It was passed to the files.

16 That's the way you asked about it at trial, too, wasn't
17 it? Do you recall that?

18 A. If you represent that I did, don't take the Court's
19 time. I accept it.

20 Q. All right. Look at Exhibit 1. It's in front of you,
21 the long sheet of paper.

22 MR. COLE: Your Honor, if he's just going to go
23 through with him what's on the Exhibit, I think it's
24 argumentative.

25 THE COURT: All right. I think we're kind of, you

1 know, pounding here where perhaps a softer touch would be
2 better. I'll let you go ahead, Mr. Stewart.

3 Q. Wasn't there a problem with Wiley Fairchild that unless
4 you asked him questions a certain way he'd get confused and
5 mess up the answer?

6 A. He was a very difficult witness.

7 Q. And the only way you could get this answer out of him as
8 to the date was to ask him what happened next; isn't that
9 right?

10 A. That thought has never occurred to me before you just
11 said it. You had to say some magic word or you had to go
12 through some litany to get Wiley Fairchild to answer a
13 question.

14 Q. It's not your recollection that if you asked it another
15 way he'd get lost and he might even give the wrong answer
16 which was that it happened after the case was passed to the
17 files?

18 A. I don't think he's ever said that to me.

19 Q. Do you recall that you staked your entire case on where
20 -- when the case was passed to the files? When Drew's case
21 was passed to the files?

22 A. I don't think I staked my entire case. It certainly was
23 an important issue at trial.

24 Q. Would you like me to read the summation?

25 A. I don't want you -- you can read it if you want. The

1 summation was long. That was a --

2 Q. Page 1,974, you said: I stake my entire case on this.

3 A. I'm sure I said a lot of other things in the closing
4 argument too.

5 Q. You have no recollection of saying that?

6 A. I have a distinct recollection of it being an important
7 point in trial. That, I'm certainly not disputing.

8 Q. Do you recall an occasion close to the Nixon trial when
9 Mr. Baltar picked you up at the Howard Johnson Hotel and
10 brought you to Mr. Fairchild's office?

11 A. No. I don't recall being alone in Baltar's car. I saw
12 the affidavit. I just don't recall that.

13 Q. If you had gone to Mr. Fairchild's office in the company
14 of an FBI agent, Mr. Baltar never would have driven; isn't
15 that correct?

16 A. Right.

17 Q. You have no recollection of an occasion when you were
18 there -- I don't mean to belabor that.

19 Did you review with Wiley on that occasion the questions
20 that you were going to ask him?

21 A. No. The irony of this whole thing is what prompted the
22 "script" is I didn't intend to -- that was not my intention.

23 Q. What was your intention?

24 A. To visit with him, encourage him to tell the truth, and
25 go home. On the eve of trial, I didn't think there was more

1 that could be done.

2 Q. How long did you meet with him?

3 A. I don't remember. I mean, the meeting was prolonged. I
4 think basically Baltar had spooked Wiley and Wiley wanted
5 some assurance that it was going to be okay in Court and he
6 wanted to be cross-examined.

7 Q. And your testimony is all you wanted to do was just say,
8 you know, tell the truth, Mr. Fairchild, and we'll get
9 through it fine?

10 A. When I was with Fairchild, oftentimes 80, 85 percent of
11 the time would be spent on procedural matters. Wiley, do us
12 no favors, Wiley go right down the middle, your life is not
13 going to be any different whether there's an acquittal or a
14 conviction.

15 Q. When you got into the conversation then --

16 A. Yes, sir.

17 Q. -- you did end up discussing the questions you intended
18 to ask, didn't you?

19 A. Yes.

20 Q. And you reviewed the possible answers, correct?

21 A. Yes.

22 Q. All right. Did Mr. Fairchild participate?

23 A. Yes.

24 Q. Did Mr. Baltar participate?

25 A. To some degree, I think.

1 Q. It was primarily a conversation between you and Mr.
2 Fairchild; is that what you're saying?

3 A. Yeah.

4 Q. Did you take notes at the meeting?

5 A. No.

6 Q. Were you confident what Mr. Fairchild was going to say
7 at the Nixon trial at the time you had this meeting with
8 him? Did you know he was going to say exactly what you had
9 reviewed with him before?

10 A. No.

11 Q. I think you've indicated to the Court you could never be
12 sure of that, could you?

13 A. No, you could never be sure that he would testify
14 precisely the same way five minutes after he gave you some
15 testimony.

16 Q. And you go out and have a meeting with him right before
17 trial and you talk about the case and the facts and you don't
18 take notes?

19 A. That's right.

20 Q. Exhibit 1, which is before you, the long sheets of
21 paper, do you have any recollection of ever seeing that in
22 Mr. Fairchild's possession at the courthouse?

23 A. I don't.

24 Q. Do you recall seeing him with a document like that
25 folded up?

1 A. No.

2 Q. Did you see him at the courthouse prior to his
3 testimony?

4 A. I don't remember.

5 Q. Did you discuss prior to his trial testimony with either
6 Mr. Fairchild or Mr. Baltar other than at this meeting a need
7 for him to review his prior testimony in order to get it
8 straight or words to that effect?

9 A. I would certainly encourage him to do what he possibly
10 can to make sure that his testimony is complete and truthful.

11 Q. Okay. Did you consider Mr. Fairchild to have been a
12 credible witness at trial at the time?

13 A. At trial?

14 Q. Yes, sir.

15 A. In some respects very credible and in some respects I
16 was not happy at all at the conclusion of his
17 cross-examination. I mean, in some respects I don't think
18 the cross-examination could have gone better for Mr. Fawer.
19 On the other hand, in fundamental points where the Government
20 relied on Fairchild, he held firm.

21 Q. I believe you testified on direct that if you didn't
22 think he was credible you would have trashed his plea
23 agreement.

24 A. If I concluded that Wiley Fairchild deliberately lied,
25 yes.

1 Q. Do you recall how many points at which you told the jury
2 in summation to believe Wiley Fairchild, that he was
3 credible?

4 A. No.

5 Q. Do you recall that you did tell them that repeatedly?

6 A. Uh-huh.

7 Q. And that you pitted his testimony against Judge Nixon's
8 and said believe Wiley Fairchild, not Judge Nixon?

9 A. In some respects. The record speaks for itself.

10 Q. What hotel did you stay at in Hattiesburg during the
11 trial?

12 A. Several. During the trial it was Howard Johnson.

13 MR. STEWART: I have no further questions.

14 MR. COLE: I have no redirect.

15 THE COURT: You may step down. You're excused, Mr.
16 Weingarten.

17 A. Thank you, Your Honor.

18 (Recess.)

19 THE COURT: Mr. Cole.

20 MR. COLE: Your Honor, the Government's next
21 witness is W. Marshall Jarrett.

22 MARSHALL JARRETT, having first been duly sworn, was examined
23 and testified as follows:

24 DIRECT EXAMINATION BY MR. COLE:

25 Q. Could you please state your full name for the record and

1 spell your last name?

2 A. Howard Marshall Jarrett, J-a-r-r-e-t-t.

3 Q. Mr. Jarrett, how are you employed?

4 A. I'm employed by the United States Department of Justice.

5 Q. What do you do for them right now?

6 A. I'm Chief of the Criminal Division of the United States
7 Attorney's Office for the District of Columbia.

8 Q. Prior to that, how were you employed?

9 A. Prior to that, I was Deputy Chief of the Public
10 Integrity Section of the Criminal Division of the Department
11 of Justice.

12 Q. Directing your attention back to the year 1984, were you
13 still employed with the Public Integrity Section?

14 A. I was.

15 Q. Were you involved at all in any of the aspects of the
16 investigation surrounding Judge Nixon?

17 A. I was.

18 Q. I'd like to direct your attention to the time frame of
19 October 30th of 1984. At that point were you informed that a
20 proffer was to be forthcoming from one Wiley Fairchild?

21 A. I was.

22 Q. And could you tell us how you were so informed?

23 A. My recollection is I was informed by Reid Weingarten.

24 Q. And where did he get the information?

25 A. He had received that information from the FBI Office in

1 Jackson, Mississippi, I believe from Weldon Kennedy, the SAC.

2 Q. Had Mr. Weingarten received any communication from Mr.
3 Ed Pittman at that time?

4 A. I don't know if Mr. Weingarten had received information
5 directly from Mr. Pittman or whether information had been
6 related to him that originated from Mr. Pittman.

7 Q. Do you recall the specifics of the proffer you received
8 at that time?

9 A. I don't recall the specifics, but I recall that
10 generally it related to a conversation between Mr. Wiley
11 Fairchild and Bud Holmes and Judge Walter Nixon.

12 Q. While you can't recall exactly what the proffer was, do
13 you recall what your evaluation of what it might be was?
14 Were you excited, were you disappointed, did it sound like
15 something good or bad?

16 A. It sounded like something very good from the standpoint
17 of an investigation.

18 Q. What did you do then?

19 A. Made arrangements to come to Jackson, Mississippi.

20 Q. Who did you come with?

21 A. Reid Weingarten.

22 Q. Anybody else come down with you from Washington?

23 A. Not that I recall.

24 Q. Did you meet with Wiley Fairchild and any of his
25 representatives?

1 A. We did.

2 Q. When was that?

3 A. November 1st, 1984.

4 Q. Who was there besides you and Mr. Weingarten and Mr.
5 Fairchild?

6 A. I recall that in addition to Mr. Weingarten and Mr.
7 Fairchild present at the meeting was Mr. Fairchild's
8 attorney, a Mr. Gunn; an individual named John Baltar; and
9 Special Agent in Charge, Weldon Kennedy.

10 Q. Was there any conversation with Mr. Fairchild prior --
11 first, was there some taping done of this proffer?

12 A. Yes.

13 Q. Was there any conversation prior to the taping?

14 A. There were some conversations prior to the taping.

15 Q. Do you recall what those conversations were?

16 A. I don't recall the details.

17 Q. Did you ever at any time during these conversations or
18 at any other time hear Mr. Weingarten or any other Government
19 agent instruct or direct Mr. Fairchild as to what testimony
20 he had to give?

21 A. I never heard Mr. Weingarten or any other agent of the
22 United States instruct or direct Mr. Fairchild how to prepare
23 or provide the proffer or how to answer questions.

24 Q. Mr. Fairchild made a proffer that day; is that correct?

25 A. He did.

1 Q. What was your reaction to that proffer compared to what
2 you had anticipated coming down to Jackson?

3 A. I recall being disappointed from the standpoint of an
4 investigation because the proffer appeared to me to be less
5 important than what I had been led to believe it would
6 contain.

7 Q. Do you recall what Mr. Fairchild was requesting in
8 return for this testimony, this proffer?

9 A. I do.

10 Q. What was it?

11 A. Immunity.

12 Q. Did you give Mr. Fairchild an answer that day as to
13 whether he'd get immunity for this proffer?

14 A. Meaning November 1st?

15 Q. Yes.

16 A. We did not. Instead we decided to discuss and evaluate
17 the information.

18 Q. Did you have a meeting with any of his representatives
19 following that?

20 A. Yes, the next day.

21 Q. And who was at that meeting?

22 A. I recall -- the meeting was with John Baltar. I recall
23 present at the meeting was Reid Weingarten and Weldon
24 Kennedy.

25 Q. What did you tell Mr. Baltar?

1 A. That we would not give his client immunity -- I mean,
2 his associate immunity.

3 Q. Did you make a counteroffer?

4 A. Not that I recall.

5 Q. Did Mr. Baltar make any comments at that time?

6 A. Yes. He was disappointed and he made some comments that
7 he was going to attempt to find out, determine, ascertain
8 more information that would be relevant to the investigation.

9 Q. After Mr. Baltar left, was there any discussion among
10 you and Mr. Weingarten and Mr. Kennedy concerning Mr. Baltar?

11 A. Yes, there was.

12 Q. Could you tell us what that discussion was?

13 A. There was a discussion about whether Mr. Baltar was
14 recording the conversation. And it was a general feeling
15 that it was quite likely that he had recorded the
16 conversation.

17 Q. Mr. Jarrett, do you recall whether Mr. Baltar was asked
18 to come to that meeting or whether he was the one who
19 initiated coming to that meeting or how it was that Mr.
20 Baltar came to that meeting on the 2nd?

21 A. I do not recall.

22 MR. COLE: Thank you, sir.

23 THE COURT: That's all?

24 MR. COLE: That's all, Your Honor.

25 CROSS-EXAMINATION BY MR. HOLLEMAN:

1 Q. Mr. Jarrett, about what time did you get to Jackson that
2 day from Washington?

3 A. Mr. Holleman, it was a morning flight. I typically
4 would have gotten in around 11:00 o'clock in the morning,
5 sometimes that flight would be delayed. But give or take an
6 hour, I would say around 11:00 a.m.

7 Q. Would it be fair to say that you were probably at the
8 Federal Building by noon, somewhere around that time?

9 A. That's probably correct.

10 Q. Were you there then before Mr. Baltar and Mr. Fairchild
11 arrived?

12 A. I don't know what time Mr. Baltar and Mr. Fairchild
13 arrived at the Federal Building.

14 Q. What was the first time you recall seeing them?

15 A. We would have eaten lunch. It would have been sometime
16 after lunch.

17 Q. Sometime after lunch?

18 A. Yes.

19 Q. And be fair to say that you would have been back from
20 lunch around 1:00 o'clock or somewhere around that period of
21 time?

22 A. 1:00 or 1:30, that's correct.

23 Q. And the taping did not start until 4:00 p.m.

24 A. That's correct.

25 Q. Now, you said a gentleman named Mr. Baltar. Of course,

1 Mr. Baltar, was not any stranger to you, was he?

2 A. He was not.

3 Q. He was your chief witness in the Government's case
4 against Arlin Robertson, the vice-president of the Board of
5 Supervisors of Harrison County.

6 A. That's incorrect.

7 Q. He was a witness in that case.

8 A. He was a 404-B witness in that case.

9 Q. I wasn't there. As you know, I have to take it. He was
10 a witness. You were familiar with him.

11 A. That's correct. He and I made our acquaintance during
12 that trial.

13 Q. And how long before this period of time was that?

14 A. The trial as I recall took place about 1982. It was on
15 the Coast.

16 Q. So you had known him since that time?

17 A. I had become acquainted with him at that time. I don't
18 recall that I had had any dealings with him from that date
19 when he was a witness in '82 until the time in '84 when I saw
20 him again.

21 Q. I'm not suggesting that you had any close social
22 relationship. But he was a man named Baltar whom you really
23 had known for about two years, knew who he was.

24 A. That's correct.

25 Q. Knew him as a witness in connection with Court

1 proceedings. Now then, whether you first began -- let me
2 back up just a little bit. Did I understand that it came to
3 you that this information arrived by virtue of a phone call
4 from then Attorney General Pittman?

5 A. I received the information, as I recall, from Mr.
6 Weingarten. Mr. Weingarten had had direct communications
7 with the FBI Office here in Jackson.

8 Q. I understand that. But you understood, as I understood
9 your testimony, the source had originated from Attorney
10 General Pittman.

11 A. I understood the source to be from Mr. Baltar.

12 Q. To Pittman and then subsequently to the agent.

13 A. Well, I believe that the information went from Mr.
14 Baltar to Mr. Pittman to Mr. Kennedy and then it went
15 directly from Mr. Baltar to Mr. Kennedy.

16 Q. All right. You didn't understand that Mr. Pittman had
17 called Mr. Kennedy?

18 A. I don't recall whether I knew that or not.

19 Q. Was Mr. Pittman at that time, was he under investigation
20 himself?

21 MR. COLE: Your Honor, I'm not sure what that has
22 to do with anything.

23 THE COURT: I'm not sure that's relevant. If it
24 is, come on and approach the bench.

25 (At the bench off the record.)

1 Q. Mr. Jarrett, in other words, as you understood it, the
2 call, it came from Baltar to Pittman to Kennedy and
3 subsequently got into your hands through Mr. Weingarten?

4 A. That's correct.

5 Q. And you arrived about 1:00 o'clock. Now, at that time
6 -- I mean, you got back after lunch about 1:00 o'clock. You
7 don't recall how long it was after that before you saw Mr.
8 Baltar and Mr. Fairchild and I believe their attorney was
9 with them, wasn't he, Mr. Wallace Gunn?

10 A. Let's see. First part of your question, no. The answer
11 is I don't recall precisely what time we met. And the
12 individuals present are the ones that I recall, the ones I
13 previously testified to.

14 Q. Did I name them correctly? Mr. Gunn, Mr. Baltar, Mr.
15 Fairchild?

16 A. That's correct.

17 Q. The ones that were involved other than the agents. I'll
18 come back to them.

19 A. Yes.

20 Q. All right. And where did the first conversation take
21 place that you all had on that day?

22 A. I recall a conversation or a meeting taking place in Mr.
23 Kennedy's office.

24 Q. All right. And was everybody -- was this around a table
25 or a desk or what?

1 A. It was in his office. It wasn't -- Mr. Kennedy was
2 behind his desk and there were chairs and the couch around in
3 his office, a rather large office. I don't recall a table
4 being there.

5 Q. Do you know Mr. Wallace Gunn?

6 A. I think I met him for the first time on that day.

7 Q. You've seen him here because he was here in the witness
8 room, I take it, in the last couple of days.

9 A. Yes.

10 Q. And you know he's an attorney from down, rather elderly
11 man, an attorney from down in Hattiesburg.

12 A. I don't recall where he's from but I do recall he was a
13 Mississippi attorney.

14 Q. And the elderly part you go from looking at his age and
15 hair, I take it.

16 A. That's kind of a relative term.

17 Q. A relative term. All right. Well, I hope so.

18 With reference to Mr. Gunn, of course, you knew he was
19 not a criminal attorney; did you not?

20 A. I did not.

21 Q. You didn't know anything about that? Well, you knew
22 that when he walked into the conference with the FBI agents
23 and with you from the Department of Justice and Mr.
24 Weingarten and set his tape recorder up on the table to tape
25 the interview. He did do that, didn't he?

1 A. I can't recall if he set up the tape recorder.

2 Q. I'm not talking about the one it was taken with, I'm
3 talking about the one that was set up and taken down.

4 A. I don't recall that.

5 Q. You don't recall that? You don't remember that Mr. Gunn
6 tried to tape this interview?

7 A. No, I don't recall.

8 Q. So after you would say about three hours of
9 conversation --

10 A. I didn't say that.

11 Q. How long did you say?

12 A. I can't recall. I recall that it was rather brief. I
13 can't be specific, but I don't recall it to have been an
14 elaborate meeting at all.

15 Q. Well, the tape was turned on at 4:00 o'clock.

16 A. Yes.

17 Q. So what happened between 1:00 and 4:00?

18 A. Well, first of all, when the tape was turned on, that
19 was not in the special agent office. We moved to another
20 office to do the taping. So that was the second part.

21 Q. How long were you in the special agent's office before
22 you moved to the other office?

23 A. I don't recall.

24 Q. Don't remember.

25 A. No.

1 Q. But anyway at 4:00 o'clock after this conversation, did
2 you talk to Mr. Fairchild yourself?

3 A. Now, can you be specific? Do you mean in the first
4 meeting or the second?

5 Q. First meeting.

6 A. That first meeting it's difficult to recall, of course,
7 but I don't remember that being a long meeting at all. I
8 just remember a meeting in the special agent's office. And
9 then we moved from that meeting to the second one where the
10 proffer was taped.

11 Q. Did you ever talk to Mr. Baltar during that time?

12 A. In my recollection there was conversation among the
13 group and with Mr. Baltar. And I recall he was requesting
14 immunity on behalf of Mr. Fairchild.

15 Q. I want to move along and not go through all that too
16 detailed.

17 A. Sure.

18 Q. But when you got down to the conference where you began
19 taking the conference down on the Government's tape recorder,
20 I take it, or one belonging to one of the agents.

21 A. Yes.

22 Q. Not Mr. Gunn's tape recorder.

23 A. No.

24 Q. All right. At that point Mr. Weingarten begin to say
25 that for the record it is approximately 4:00 p.m. and so

1 forth and the official transcript of the proffer begins; is
2 that correct?

3 A. The transcript of the proffer.

4 Q. The what?

5 A. The transcript.

6 Q. The transcript. All right. And you were present
7 throughout that time.

8 A. I was.

9 Q. As well as the other people that you've named. Baltar.

10 A. Correct.

11 Q. Kennedy, Weingarten, and Mr. Gunn.

12 A. Right.

13 THE COURT: We know who was there, Boyce. I don't
14 want to linger too long on this.

15 MR. HOLLEMAN: Thank you. All right.

16 Q. Now, when you got there was Mr. Fairchild having some
17 difficulty in answering some of the questions?

18 A. No.

19 Q. He did not?

20 A. No.

21 Q. Let me just ask you about one or two pages of Exhibit
22 No. 12 and 20, please. Looking at No. 12 there just for a
23 moment. I want to go through this in a hurry. No. 12 there,
24 looking at No. 12, and turn to Page 6 of that transcript.
25 And you'll see at the top where Mr. Fairchild is talking

1 after some six pages he talks about: I was scared not to
2 although three months before my son done had his plea
3 bargain. I'm getting confused. Do you see where Mr.
4 Fairchild says that?

5 A. I do.

6 Q. And Mr. Weingarten said: No, that's true, that's true,
7 so far so good. Were you present when that was said?

8 A. I was.

9 Q. What did Mr. Weingarten mean when he said: That's true,
10 that's true, so far so good? What was your impression of
11 that when he said that to Mr. Fairchild?

12 A. Let me take just a minute and review this.

13 Q. Yes, sir.

14 A. Okay. Your question is what was my impression of what
15 Mr. --

16 Q. Why was he saying that's true, that's true, so far so
17 good?

18 A. All right. Mr. Fairchild was a very difficult
19 individual to understand, in my judgment. At the end of the
20 previous -- at the end of that statement, Mr. Fairchild said,
21 I'm getting confused. And he just recited a number of facts
22 and events. I took what Mr. Weingarten was saying there to
23 mean that what Mr. Fairchild was saying was consistent with
24 what Mr. Weingarten had understood the temporal relationship
25 between certain events to be.

1 Q. Well, wasn't it that he was getting back on what had
2 been said before the tape was cut on? He said now, no,
3 that's -- so far that's good, that's good, go ahead, that's
4 true?

5 A. I don't think so.

6 Q. Well, he couldn't know what he was telling him whether
7 it was true or false, could he? He was hearing it.

8 MR. COLE: Objection. He's asking for somebody
9 else's impressions.

10 THE COURT: Sustained.

11 Q. Now, at the end of the tape Mr. Weingarten says: Okay.
12 Can we go off the record for a second; do you see that?

13 A. I do. Page 9?

14 Q. Yes, sir.

15 A. Yes.

16 Q. What happened after that? Don't you usually conclude a
17 tape like that when you finish? We are now complete and it's
18 now such and such a time and we're now adjourning the
19 interview and so forth? My question: Isn't that your
20 practice? Haven't you seen many, many tapes taken in that
21 manner where they come back on and conclude so you know that
22 it's over?

23 A. That certainly is one way to tie-up the end of an
24 interview. And frankly I can't recall why the interview
25 terminated this way.

1 Q. We don't have any more of what happened after that, do
2 we?

3 A. I guess not.

4 Q. I want to show you this Exhibit 20 for just a moment.

5 MR. HOLLEMAN: If Your Honor please, I'm about
6 through.

7 Q. I ask you to look at that and refresh your recollection
8 about that a little bit. Does that refresh your recollection
9 about that, sir?

10 A. About what, sir?

11 Q. As to what that document is.

12 A. Looks like it's a teletype to FBI headquarters from the
13 field.

14 Q. It's a report on the --

15 MR. COLE: I think the witness has characterized it
16 rather than Mr. Holleman characterizing it, Your Honor.

17 A. Yes, sir.

18 MR. HOLLEMAN: I certainly don't want to
19 characterize the report.

20 THE COURT: Let's take it from Mr. Jarrett.

21 Q. Do you recognize what it is?

22 A. It appears to be a report from the field FBI
23 headquarters.

24 Q. Do you recognize the subject of it?

25 A. I do.



1 Q. What is it?

2 A. It was the meeting -- I guess preparatory information
3 and discussion of the meeting that was about the meeting that
4 was held on November 1st, 1984, with Mr. Fairchild. I
5 haven't finished reading it, but I presume it's the proffer.

6 Q. And doesn't it also concern the trip the next day of Mr.
7 Baltar who came back to Jackson?

8 A. I am to that point right now. If you'll wait just a
9 minute and let me read.

10 Q. Okay. I'm not going to ask you anything about the
11 contents of it, Mr. Jarrett. I just want you to know what it
12 is.

13 A. Okay.

14 Q. Did you talk to Mr. Baltar on the next day?

15 A. I did.

16 Q. Is it unusual -- you're a very distinguished and
17 long-time experienced prosecutor for the United States
18 Government, is it unusual to talk to a layman about a plea
19 arrangement with a person rather when you know that person
20 has an attorney like Mr. Wiley Fairchild did?

21 A. Yes. I understood the relationship between Mr. Baltar
22 and Mr. Fairchild to be an unusual relationship.

23 Q. Well, I think you were correct. But does that transcend
24 the duty of the attorney to talk to the man's attorney, Mr.
25 Wallace Gunn, you knew represented him? I'm just wondering

1 why that was done.

2 A. I don't recall.

3 Q. You don't recall?

4 A. I don't recall.

5 MR. HOLLEMAN: No further questions.

6 RE-DIRECT EXAMINATION BY MR. COLE:

7 Q. Mr. Jarrett, have you ever used an intermediary to relay
8 information to an attorney?

9 A. Of course.

10 Q. Was there anything different said before the tape
11 recorder went on from what was said after the tape recorder
12 went on?

13 A. Do you mean by --

14 Q. By Mr. Fairchild.

15 A. There were things said after the tape recorder went on
16 that I was surprised by. There's a whole discussion about a
17 Preacher Shows. Frankly I was puzzled, and I didn't
18 understand how that fit into the context of the proffer.

19 Q. That hadn't been mentioned before?

20 A. I had no recollection of that.

21 MR. COLE: Thank you.

22 RECROSS-EXAMINATION BY MR. HOLLEMAN:

23 Q. You say there was nothing different between what
24 happened before the tape went on and after the tape went on?

25 A. Well, that's correct. I got a general impression of the

1 contours of what the proffer would be prior to the tape
2 recorder going on.

3 Q. Do you have exhibit -- did I give you 20 there?

4 A. I have 20, yes.

5 Q. Would you turn over about the third page of that where
6 the last paragraph beginning with during the lengthy
7 conference; do you see that?

8 A. Yes.

9 Q. A proffer was made of Fairchild's attorneys and so forth
10 and so on and it says dealing with the question down there:
11 District Attorney Paul Bud Holmes and subject -- he was
12 telephonically contacted by former Forrest County,
13 Mississippi District Attorney Paul Bud Holmes and subject
14 Nixon who was on an extension phone with Holmes, et cetera.
15 That never was said after the tape was turned on, was it?

16 A. That is correct.

17 Q. So there was a difference.

18 A. No, I don't recall there being a difference.

19 Q. Isn't that extremely different from what was said during
20 the tape that's actually running?

21 MR. COLE: Your Honor, I don't think he's laid the
22 proper foundation about asking whether that was said before
23 the tape was turned on.

24 THE COURT: I would agree. You know what we're
25 talking about?

1 MR. HOLLEMAN: Yes. Page 3.

2 THE COURT: Last couple of sentences, telephonic
3 contact by Holmes and Nixon.

4 MR. HOLLEMAN: If Your Honor please, it's in the
5 paragraph that begins during the lengthy conference.

6 THE COURT: Yes. At the bottom. So the question
7 is: Do you recall this being referred to in both instances
8 before and we'll say during the tape? I guess that's the
9 question.

10 MR. HOLLEMAN: Yes, sir. That's the question. He
11 said there was no difference in the two and that was my
12 question.

13 A. Let me take just a minute and review that sentence.

14 Q. All right, Mr. Jarrett.

15 A. Okay. Repeat your question.

16 Q. There is a difference, is there not, between what was
17 said -- the paragraph preceding that says: On November 1st a
18 meeting was held, talked about this meeting. Then it said:
19 During the lengthy conference -- and then there -- what you
20 say was said prior to the time the tape was turned on --

21 MR. COLE: I think this needs to be clarified, Your
22 Honor. He's implying that Mr. Jarrett wrote this document.

23 MR. HOLLEMAN: I didn't say that. I didn't mean to
24 imply that.

25 THE COURT: I didn't think that.

1 MR. HOLLEMAN: I think M^r. Jarrett understands I
2 didn't say he wrote the document.

3 Q. It is said or stated in this report here that prior to
4 that time he said that he was --

5 MR. COLE: Objection, Your Honor. It doesn't say
6 that prior to that time either.

7 MR. HOLLEMAN: Well, we know it's not on the tape.

8 THE COURT: Your question is: During the
9 conference or discussion, whatever we want to call it, the
10 pre-tape discussion that is not recorded, was there any
11 reference as you recall to specifically a telephone contact
12 by Holmes and Nixon, Holmes was on an extension phone and the
13 discussion of the Drew Fairchild's case; is that your
14 question?

15 MR. HOLLEMAN: That's right.

16 THE COURT: Do you recall that being mentioned
17 prior to the tape?

18 A. Your Honor, I cannot recall that being mentioned.

19 Q. But you do know it does not appear on the recorded
20 tape.

21 A. I'll have to look at the recorded tape conversation
22 again, but the tape will speak for itself.

23 Q. The tape will speak for itself?

24 MR. HOLLEMAN: No further questions.

25 MR. COLE: I have nothing further, Your Honor.

1 THE COURT: You're excused. You may step down.

2 A. Thank you, Your Honor.

3 MR. COLE: Government's next witness is Weldon
4 Kennedy.

5 Your Honor, I'll be using Government's Exhibits S
6 and T with Mr. Kennedy. If I may, I'd like to offer those
7 now that we're in the Government's case.

8 THE COURT: Mr. Stewart, did you hear?

9 MR. STEWART: I heard that. I think I heard it.
10 He was offering Exhibits S and T.

11 THE COURT: S and T. Well, Mr. Kennedy will have
12 firsthand knowledge of them I take it.

13 MR. COLE: He is the author of S and T.

14 MR. STEWART: All right. No objection.

15 WELDON KENNEDY, having first been duly sworn, was examined
16 and testified as follows:

17 DIRECT EXAMINATION BY MR. COLE:

18 Q. Would you state your name, please, and spell your last
19 name?

20 A. I'm Weldon L. Kennedy, K-e-n-n-e-d-y.

21 Q. How are you employed?

22 A. Special Agent with the FBI.

23 Q. Do you have a particular assignment at this time?

24 A. At this time I'm the Special Agent in Charge of the
25 Atlanta Division of the FBI.

1 Q. Prior to that, what was your assignment with the FBI?

2 A. Prior to that I was the Special Agent in Charge of the
3 Jackson Division.

4 Q. Tell us how long you've been with the FBI.

5 A. 25 years.

6 Q. Could you tell us the period of time you were Special
7 Agent in Charge in Jackson?

8 A. From July of 1982 until March 25th, 1985.

9 Q. During that period of time were you involved in the
10 investigation of Judge Walter Nixon?

11 A. Yes, sir, I was.

12 Q. I'd like to direct your attention to September of 1984.
13 Was an individual by the name of Wiley Fairchild indicted by
14 the Federal Government?

15 A. Yes, he was.

16 Q. Did the FBI handle that case?

17 A. Yes, we did.

18 Q. Mr. Kennedy, I'd like to show you Exhibits S and T.
19 Have you ever seen those before?

20 A. Yes, I have.

21 Q. Did you write those?

22 A. Yes, I wrote both of these documents.

23 Q. I'd like to ask you some questions about these, Mr.
24 Kennedy. Were these accurate when you wrote them?

25 A. Yes, sir, they were.

1 Q. How long a period of time was there between the events
2 that took place and the day you wrote them?

3 A. On Exhibit No. 5, which is dated October 30 --

4 Q. That would be S.

5 A. S, I'm sorry.

6 Q. That's an S. My bad handwriting.

7 A. I'm sorry. Dated October 30, 1984, it does not indicate
8 the date that it was dictated, but I believe it was on the
9 same day since the date stamp at the bottom indicates October
10 30, 1984.

11 Q. All right. And how about T?

12 A. T was dictated on the 30th of October, 1984, and
13 transcribed on the same day and reflects a contact on that
14 same date, October 30, 1984.

15 Q. And is it true that S also reflects a contact on October
16 30, 1984?

17 A. Yes, it does.

18 Q. So all these were written the same day that the events
19 happened?

20 A. Yes, that is correct.

21 Q. On October 30, 1984, did you get a visit from a Mr. Ed
22 Pittman?

23 A. Yes, I did.

24 Q. Why was Mr. Pittman coming to see you?

25 A. Mr. Pittman related to me that he had been visited at

1 his residence on the previous Sunday, which I believe was the
2 28th of October, by Mr. John Baltar and was at my office
3 pursuant to Mr. Baltar's request.

4 Q. Did he have an explanation as to who Mr. Baltar spoke to
5 him about?

6 A. Yes, he did. He told me that Mr. Baltar was speaking to
7 him about Wiley Fairchild and his current situation, the
8 situation at the time with the Government.

9 Q. Prior to this, were you aware of any plea negotiations
10 between the Government and Mr. Fairchild?

11 A. No, I was not.

12 Q. Did Mr. Pittman relate to you any feelings Mr. Baltar
13 talked about, about how Mr. Fairchild viewed his current
14 legal representation?

15 A. Yes, he did. As reflected in the memo here he related
16 that Mr. Baltar was indicating that Mr. Fairchild was
17 disenchanted with the legal advice that he had been given and
18 that -- in connection with that recent indictment and that
19 Mr. Fairchild did in fact have other significant information
20 which he would be able to provide to the Government.

21 MR. STEWART: Your Honor, I'm sure the Court
22 appreciates this. I just want to note with the record that
23 we're dealing with double hearsay here.

24 THE COURT: I understand. The point about being
25 the backer of his own knowledge, that's not hearsay.

1 Q. Who did the information concern that Mr. Fairchild had
2 to offer? Who was he offering information about? I believe
3 you had stated that Mr. Pittman told you Mr. Balter had told
4 him that Mr. Fairchild had information to offer to the
5 Federal Government. Who did that information concern?

6 A. Judge Nixon.

7 Q. Anybody else?

8 A. Indicated that there were others but he did not indicate
9 who they might be.

10 Q. What did Mr. Fairchild want in return for this
11 information?

12 A. According to what was relayed to Mr. Pittman, he was
13 seeking immunity from prosecution.

14 Q. Did Mr. Pittman indicate what that information might be
15 that Mr. Fairchild had?

16 A. Only in a very general way.

17 Q. What did he say?

18 A. He said that he was willing to discuss with the
19 Government the fact that Mr. Fairchild had received a
20 telephone call from Bud Holmes, who was then the District
21 Attorney in Hattiesburg, and that Mr. Holmes had put extreme
22 pressure on Mr. Fairchild to go through with the transfer of
23 some royalties and some oil and gas wells owned by Mr.
24 Fairchild.

25 Q. Transfer to whom?

1 A. Transfer of these royalties.

2 Q. To whom?

3 A. To Mr. Nixon, Judge Nixon.

4 Q. Was Judge Nixon on the line during this call?

5 A. He indicated that he was.

6 Q. Was Mr. Fairchild, according to this information,
7 offered anything in return for transferring these royalties?

8 A. This would be beneficial for his son, Drew Fairchild,
9 who had at that time some legal difficulties.

10 Q. Beneficial in what way?

11 A. It's not fully indicated, just indicated that it would
12 be -- would cause the least amount of problems for Drew
13 Fairchild.

14 Q. Did they indicate how Drew Fairchild's case might be --
15 would it refresh your recollection to look at the memo?

16 A. Yes, it would.

17 Q. Why don't you do that if it would refresh your
18 recollection as to what Mr. Pittman told you. If I may, I'll
19 direct your attention to the bottom of the first page and the
20 top of the second page.

21 A. Okay.

22 Q. Does that refresh your recollection?

23 A. Yes, it does.

24 Q. What did you hear from Mr. Pittman as far as what would
25 happen with Drew Fairchild's case?

- 1 A. That it really didn't make any difference whether it was
2 handled Federally or locally there in Hattiesburg because on
3 the one hand if the case were handled Federally, Judge Nixon
4 would be able to take care of the matter and if it were
5 handled locally there in Hattiesburg that Bud Holmes would be
6 able to take care of the matter. That was the language that
7 was used.
- 8 Q. And again what was sought in return for this
9 information?
- 10 A. Immunity from Federal prosecution.
- 11 Q. Now, was there a mention during this conversation of Mr.
12 Baltar in Mr. Fairchild's view of Reid Weingarten at the
13 time?
- 14 A. Yes. Mr. Pittman indicated to me that Baltar had
15 indicated a very strong fear of Reid Weingarten and that was
16 the reason why they were coming to me to act as an
17 intermediary.
- 18 Q. What did you do at that point, Mr. Kennedy?
- 19 A. While Mr. Pittman was still in the office, I contacted
20 Mr. Weingarten in Washington by phone.
- 21 Q. And who talked to Mr. Weingarten that day?
- 22 A. After I had a brief discussion with him, indicated what
23 was transpiring, I put Mr. Pittman on the phone with Mr.
24 Weingarten.
- 25 Q. And did you hear what Mr. Pittman said to Mr.

1 Weingarten?

2 A. Yes. Mr. Pittman essentially related what he had
3 related to me telephonically to Mr. Weingarten.

4 Q. Did Mr. Weingarten make a request at that time?

5 A. Yes. He indicated to Mr. Pittman that he should
6 recontact Mr. Baltar, advise him that he had had a meeting
7 with me, Kennedy, and also had had a discussion with Mr.
8 Weingarten.

9 Q. Did Mr. Baltar contact you that day?

10 A. Yes, he did.

11 Q. How many times?

12 A. Two. On two separate occasions.

13 Q. How did you contact you?

14 A. Telephonically.

15 Q. When he contacted you telephonically, did you make a 302
16 of the conversation?

17 A. Yes, I did.

18 Q. Is that Exhibit T?

19 A. That is Exhibit T.

20 Q. What did Mr. Baltar tell you?

21 THE COURT: Do we have to go over it? I gather
22 it's basically what's in here. If there's a question about
23 it, Mr. Stewart, I'll have him develop it, but otherwise I
24 would assume that this is your report.

25 A. Yes, sir.

1 THE COURT: This is what Mr. Cole is discussing
2 with you.

3 A. Yes, Your Honor.

4 THE COURT: Do it that way and then Mr. Stewart if
5 you want to cross-examine, you can cross-examine him.

6 MR. STEWART: That would be fine.

7 THE COURT: I can read.

8 MR. COLE: Fine. May I just ask one or two
9 questions about it, Your Honor?

10 THE COURT: Sure.

11 Q. In your report, Mr. Kennedy, there are a number of
12 assertions that you state Mr. Baltar made that the
13 information he has is very valuable, of the utmost importance
14 to United States Government, that it would certainly be worth
15 the Government's -- worthwhile for the Government to
16 entertain and agree to Mr. Fairchild's terms of immunity,
17 that this information would be extremely important and of an
18 invaluable assistance to the United States.

19 A. Yes, he did. And requested urgently that there be a
20 meeting with departmental attorneys.

21 Q. Now, these more or less emphatic statements, were they
22 Mr. Baltar's statements or your own?

23 A. They were Mr. Baltar's statements.

24 Q. And did Mr. Baltar relate to you any of the details of
25 the proffer?

1 A. Again indicating that immunity was being sought in
2 connection with this, he, too, made reference to a telephone
3 call to Wiley Fairchild from District Attorney Bud Holmes
4 while Judge Nixon was on the line.

5 Q. And once again Mr. Baltar was asking for immunity on
6 behalf of Mr. Fairchild; is that correct?

7 A. Yes, he was.

8 Q. Did you call Reid Weingarten after this conversation?

9 A. Yes, I did.

10 Q. What did you say to him?

11 A. I related to him the substance of the meeting that we
12 had had, that I thought that it also was important that we
13 arrange a meeting as soon as possible.

14 Q. And did you arrange such a meeting?

15 A. I did.

16 Q. When was it?

17 A. The meeting was held the following day.

18 Q. Following day?

19 A. Excuse me. November the 1st, which probably was -- this
20 was October 30, it would have been two days later.

21 Q. All right. Who was at that meeting?

22 A. The meeting was Mr. Baltar; Mr. Fairchild; Mr. Wallace
23 Gunn, an attorney representing Mr. Fairchild; Reid
24 Weingarten; Marshall Jarrett, another departmental attorney;
25 and myself.

1 Q. Was part of this meeting taped?

2 A. Yes, it was.

3 Q. Was part of it not taped?

4 A. I believe so, yes.

5 Q. Prior to the taping, what kind of discussion was going
6 on at the meeting?

7 A. Mr. Weingarten was attempting to illicit from Mr.
8 Fairchild precisely what information he had to furnish the
9 Government.

10 Q. Was Mr. Weingarten in any way trying to dictate what Mr.
11 Fairchild was to say?

12 A. No, he was not.

13 Q. Was he trying in any way to encourage Mr. Fairchild to
14 testify one way or another?

15 MR. STEWART: Objection as to what he was trying to
16 do.

17 THE COURT: I'll sustain as to form. And you can
18 ask him to describe Mr. Weingarten's approach to the
19 questioning of Mr. Fairchild as observed by Mr. Kennedy.

20 MR. COLE: Thank you.

21 Q. Mr. Kennedy, if you would, the Judge phrased it better
22 than I ever could, so if you would just answer that question,
23 please.

24 A. Mr. Weingarten was attempting to determine through a
25 conversation with Mr. Fairchild what information he had that

1 was so valuable to the Government.

2 Q. Have you read the taped portion of the proffer?

3 A. Yes. Sometime ago I did, yes.

4 Q. To the best of your recollection, was there any
5 difference between the taped portion and the untaped portion
6 as to what Mr. Fairchild told you?

7 A. Yes, there was some difference.

8 Q. What were those differences?

9 A. Almost immediately after we turned on the tape or after
10 Mr. Weingarten turned on the tape, he was operating the
11 machine, Mr. Fairchild began a discussion concerning a Dr.
12 Shows, which had not been previously discussed.

13 Q. Any other differences?

14 A. No, not substantial.

15 Q. Do you recall whether Mr. Gunn tried to tape record the
16 meeting?

17 A. To my recollection, no, he did not.

18 Q. Was Mr. Fairchild's proffer that he actually gave
19 himself any different from what Mr. Baltar had represented?

20 A. Yes, I believe that it was.

21 Q. Was it better or worse from the standpoint of making a
22 case?

23 A. I would characterize it as worse.

24 Q. Did you give him an answer that day, Mr. Fairchild, his
25 attorneys or his representatives on whether the Government

- 1 would give him immunity?
- 2 A. No.
- 3 Q. Was there an answer given?
- 4 A. The following day, yes.
- 5 Q. Who was at that meeting?
- 6 A. Mr. Baltar, myself, Mr. Weingarten, and Mr. Jarrett.
- 7 Q. And what was Mr. Baltar told at that time?
- 8 A. He was told that the information provided would not rise
- 9 to the level of that necessary to warrant a granted immunity.
- 10 Q. Was anything else said to Mr. Baltar that day, any
- 11 counteroffer given?
- 12 A. No.
- 13 Q. After Mr. Baltar left the meeting, was there a
- 14 discussion amongst you and Mr. Weingarten and Mr. Jarrett
- 15 about Mr. Baltar?
- 16 A. Yes, there was.
- 17 Q. And what did that discussion concern?
- 18 A. That we all agreed that it was quite possible that that
- 19 meeting had been taped.
- 20 Q. You have Exhibit 20 in front of you and I'd like to
- 21 direct your attention, if I could, to the third page, bottom
- 22 paragraph. First of all, this is an FBI teletype; is that
- 23 correct?
- 24 A. Yes, this is a teletype.
- 25 Q. Is this an internal document?

1 A. Yes, it is.

2 Q. Do you know who wrote this document?

3 A. Ken White-Spunner.

4 Q. You did not write it; is that correct, sir?

5 A. No, I did not.

6 Q. I notice it has to be approved and signed out. I notice
7 there's initials WK slash and something else at the bottom.

8 Did you approve the sending out of this document?

9 A. No, I did not.

10 Q. Who did?

11 A. That would have been Supervisor Murphy who was assigned
12 to the Jackson Office.

13 Q. Would he have been approving it in your absence then?

14 A. Yes.

15 Q. So you didn't see this document before it went out; is
16 that correct?

17 A. No, I did not.

18 Q. Now, was supervisor Murphy at the proffer?

19 A. No, he was not.

20 Q. Was Agent White-Spunner at the proffer?

21 A. No, sir, he was not.

22 Q. Now, this paragraph states that during the lengthy
23 conversation -- basically describes the proffer and then
24 states that what Mr. Fairchild said at the proffer was that
25 he was telephonically contacted by District Attorney Bud

1 Holmes with Nixon on the extension during which they
2 discussed the handling of Drew Fairchild's case. Best of
3 your recollection, did Mr. Fairchild say that at the proffer?

4 A. No, he did not.

5 MR. COLE: Thank you, sir. I have no further
6 questions at this time, Your Honor.

7 CROSS-EXAMINATION BY MR. STEWART:

8 Q. Afternoon, Agent Kennedy.

9 A. Afternoon.

10 Q. How long had you worked with Agent White-Spunner at the
11 time, 1984, November of 1984?

12 A. At the time of the writing of these documents?

13 Q. Yeah.

14 A. Approximately two years.

15 Q. How long had he been with the Bureau by that point?

16 A. Probably between 15 and 20 years.

17 Q. Is he a good agent?

18 A. He's an outstanding agent.

19 Q. Exhibit 20 in front of you is a report to the Washington
20 office. Y'all call it the home office of the FBI; is that
21 correct?

22 A. That's correct.

23 Q. Person to whom the report was submitted was your
24 superior; isn't that right?

25 A. That is correct.

1 Q. Was there a value placed in your office on making
2 accurate reports to your superiors?

3 A. Yes, sir.

4 Q. Did Agent White-Spunner understand that?

5 A. I'm sure he did, sir.

6 Q. Did you on any occasion ever have to reprimand him for
7 having made inaccurate reports?

8 A. No, I did not.

9 Q. In your opinion, does Agent White-Spunner understand
10 when an offer has been made of a plea bargain?

11 A. I should think that he would, yes.

12 Q. If you would turn to the fourth page of Exhibit 20. I'm
13 not sure I recall, have you read this document recently?

14 A. Yes, I have.

15 Q. Let me read you the passage there. I'm in the middle
16 paragraph: And the counter proposal was made by USDJ
17 attorneys whereby if -- I'm jumping into this and I shouldn't
18 have. This is a description of the November 2 meeting with
19 Mr. Baltar. Do you have that there?

20 A. Yes, I have the document.

21 Q. Okay. This is the day after the proffer, correct?

22 A. November 2nd, yes.

23 Q. Do you know how Mr. Baltar -- did you call him to set up
24 that meeting?

25 A. I don't recall. You mean the November the 2nd meeting

1 when he came into the office?

2 Q. Yeah.

3 A. I don't recall how that was set up.

4 Q. He didn't just show up on your doorstep, did he?

5 A. No, I'm sure he did not.

6 Q. This was a scheduled meeting.

7 A. It must have been scheduled the day before, but I'm not
8 certain of that.

9 Q. I'm down about the sixth or seventh line. It says: And
10 a counter proposal was made by US DJ attorneys whereby
11 Fairchild would plead guilty to one count dealing with
12 furnishing a gratuity to subject. That Count No. II of the
13 indictment, perjury, would be dropped. And that sentencing
14 would thereafter be deferred pending full cooperation by Mr.
15 Fairchild.

16 Does that refresh your recollection that a counter
17 proposal was made?

18 A. I believe that this is inaccurate, if that's what you're
19 asking.

20 Q. You're saying Mr. White-Spunner just got this completely
21 wrong?

22 A. No, sir, I did not say that he got it completely wrong,
23 but I believe that that portion of it is inaccurate.

24 Q. Were there any other occasions with your association
25 with Mr. White-Spunner where he thought a plea offer had been

1 made when there wasn't one?

2 MR. COLE: Objection, Your Honor.

3 THE COURT: I'll sustain the objection. I don't
4 want to debate the question of the accuracy or inaccuracy
5 here. I'm not going to go into that. I think he asked him
6 earlier if he had ever been reprimanded but he said no.

7 MR. STEWART: I'll move on.

8 THE COURT: I'll hear whatever you want about this.

9 Q. Agent Kennedy, you've testified concerning a memorandum
10 you prepared about your conversation with Ed Pittman. Did
11 you have any way to know whether Mr. Pittman in that
12 conversation was accurately recounting what John Baltar had
13 told you?

14 A. No, I did not.

15 Q. So you were getting a secondhand version of what John
16 Baltar said; isn't that right?

17 A. That's correct.

18 Q. And to the extent it related to what Mr. Fairchild said,
19 you were getting a thirdhand version; is that correct?

20 A. Yes, it would be. Yes.

21 Q. Now, the allegations that are in those two Exhibits, S
22 and T, your telephone conversations on October 30th and your
23 meeting on October 30th, I believe it is, you never heard
24 those allegations again in the case, did you?

25 A. About the substance of the telephone call, is that what

1 you're referring to?

2 Q. About the extreme pressure on Wiley Fairchild by Bud
3 Holmes for an investment.

4 A. No, I did not.

5 Q. Those allegations never proved out, did they?

6 A. I'm not sure what you're referring to, but I don't know
7 that they did.

8 Q. I wanted to ask you, Mr. Kennedy, was there ever any
9 time that you became aware of a telephone toll record or some
10 kind of document that was supposed to provide a date for the
11 time -- a date or a general dating of the phone call from Bud
12 Holmes' farm to Wiley Fairchild?

13 A. I'm not aware of that.

14 Q. You never heard of that?

15 A. No, I've not.

16 Q. Let me ask you a few more questions about Exhibit 20.
17 You could turn to the page before the one we were just
18 talking about. The paragraph starting at about the bottom of
19 the page begins during the lengthy conference. And this
20 refers to the proffer meeting. Do you recall how long that
21 meeting was?

22 A. Not exactly. I would guess at least two hours, but I
23 don't have a firm recollection of exactly how long it was.

24 Q. Do you recall that it was tape recorded, part of it?

25 A. Yes, I do.

1 Q. Do you recall how long the tape recorded portion was?

2 A. No, I don't. Probably -- I don't have a recollection.

3 Q. Do you recall how long the time before the tape recorded
4 part was?

5 A. In my mind, I would separate it almost in half. Like it
6 was, to the best of my recollection, about 50/50.

7 Q. There's a statement in this memorandum from your office
8 about that proffer in that same paragraph, fourth line:
9 Fairchild thereafter furnished a small amount of information
10 concerning investigation in that he advised during December
11 of '82 he was telephonically contacted by former Forrest
12 County, Mississippi, District Attorney Paul Bud Holmes and
13 subject Nixon.

14 Do you recall Mr. Fairchild saying that that contact had
15 been in December of 1982?

16 A. Yes.

17 Q. Did he say that on the tape or off the tape?

18 A. I don't recall. I don't know.

19 Q. Have you got Exhibit 12 up there?

20 A. No, I do not.

21 Q. Have you seen Exhibit 12 before?

22 A. Yes, I have.

23 Q. What is it?

24 A. It is a transcription of a tape recording reflecting Mr.
25 Weingarten and others.

- 1 Q. That's of the proffer meeting, correct?
- 2 A. Yes, I believe it is.
- 3 Q. All right. I'd like to direct your attention to
- 4 Page 8. Next to the last page.
- 5 A. Okay.
- 6 Q. Paragraph there headed Fairchild toward the bottom of
- 7 the page, it's a large paragraph. He said: Wiley, the man
- 8 that we talked about this evening, I'm over at his house; do
- 9 you have that?
- 10 A. Yes, I do.
- 11 Q. I want to read the last sentence to you: So that ended
- 12 that. And we're trying to tie that date down because when
- 13 Bob Royals came back from Maxwell's, see, and I think it was
- 14 pretty close to the time it was passed to the files.
- 15 Do you have a recollection that that was Mr. Fairchild's
- 16 attempt on that occasion to date when that phone call had
- 17 occurred?
- 18 A. That apparently is what this reflects.
- 19 Q. Well, my question was: Do you have a recollection that
- 20 that was an attempt he made to tie it to the Bob Royals
- 21 visit?
- 22 A. Yes, sir, it is.
- 23 Q. Did you participate in the effort to determine when Mr.
- 24 Royals had made that visit to Wiley Fairchild?
- 25 A. No, I did not.

1 Q. Did agents under your direction do so?

2 A. Yes, they did.

3 Q. Do you know the results of their investigation?

4 A. No, I don't recall the results of that.

5 Q. Do you know who performed that investigation?

6 A. No, I do not.

7 Q. You don't know if it was Mr. White-Spunner?

8 A. It could very well have been, but I don't know who it
9 was.

10 Q. Let me just ask one more question. So you don't know
11 whether it was determined that -- strike that.

12 Let me see if I can try to date the Bob Royals matter.
13 Did Mr. Fairchild say anything during that --

14 MR. COLE: Your Honor, I'm not really sure it's
15 important to have Mr. Kennedy date the Bob Royals matter at
16 this point.

17 THE COURT: Mr. Stewart? No speech. Is it
18 something that you deem --

19 MR. STEWART: I'm going to keep moving, Judge.

20 THE COURT: Okay.

21 Q. In the passage in Exhibit 20 I was reading to you the
22 bottom of the third page, there is the statement there -- was
23 telephonically contacted by former Forrest County,
24 Mississippi, District Attorney Paul Bud Holmes and subject
25 Nixon who was on an extension phone with Holmes. Do you

1 recall that as having -- as what Mr. Fairchild said on that
2 occasion that Judge Nixon was on an extension phone with Bud
3 Holmes?

4 A. I don't specifically recall that statement by Mr.
5 Fairchild, no.

6 MR. STEWART: I have no further questions.

7 MR. COLE: I have nothing further, Your Honor.

8 THE COURT: You're excused.

9 A. Thank you.

10 MR. COLE: Your Honor, if we may approach just
11 concerning the number of witnesses that are left and what
12 we're going to be doing here.

13 (At the bench.)

14 THE COURT: For the record, we're approaching the
15 end, although I just remembered I had not asked Mr. Stewart
16 about rebuttal. And by approaching the end Mr. Cole has
17 raised the question of remaining witnesses. I think
18 concerning Mr. White, when I say we agree, let me say that
19 basically Mr. Stewart had listed him and concedes that he is
20 "peripheral" and he would just reiterate the things that
21 we've heard so I'm most happy if you will give up Agent
22 White.

23 MR. COLE: I am most happy to do so.

24 THE COURT: Nextly I think that White-Spinner you
25 were inclined not to call but Mr. Stewart feels that

1 White-Spunner should be called and I would assume it relates
2 primarily, if not solely, to the question on Exhibit 20.

3 MR. STEWART: Yes, sir.

4 THE COURT: So, if you will, call White-Spunner.

5 MR. COLE: I'll call him.

6 THE COURT: Then we just have --

7 MR. COLE: Agent Lawless.

8 THE COURT: That will be it.

9 MR. COLE: Right. And he will be brief.

10 THE COURT: And I didn't ask you. I don't even
11 like to use the word rebuttal.

12 MR. HOLLEMAN: I don't think we'll have any, Judge.

13 MR. STEWART: We don't anticipate it.

14 THE COURT: We'll have a five minute recess.

15 (Bench conference concluded.)

16 THE COURT: Let's stand in recess for five
17 minutes.

18 (Recess.)

19 MR. COLE: Your Honor, the United States would call
20 Kenneth White-Spunner.

21 KENNETH WHITE-SPUNNER, JR., having first been duly sworn, was
22 examined and testified as follows:

23 DIRECT EXAMINATION BY MR. COLE:

24 Q. Would you please state your name and spell your last
25 name for the record?

1 A. Kenneth B. White-Spunner, Jr. It's spelled

2 W-h-i-t-e-hyphen-S-p-u-n-n-e-r.

3 Q. Mr. White-Spunner, were you an agent with the FBI?

4 A. Yes, I was.

5 Q. During what period of time?

6 A. From October, 1961, through the first week in January,
7 1966.

8 Q. During the time you were with the FBI, did your
9 responsibilities include being a case agent on the case
10 involving Judge Walter Nixon?

11 A. Yes, sir.

12 Q. Mr. White-Spunner, I'd like to show you what's marked as
13 Exhibit 20 and ask you if you've ever seen that before.

14 A. It has my -- yes, I've seen it before. It has my
15 initials on it.

16 Q. Did you write it?

17 A. Yes. The typed initials on the bottom indicate that I
18 did dictate this.

19 Q. I'd now like to show you Exhibit S. Ask if you've ever
20 seen that before.

21 A. Yes, I have.

22 Q. Now, I'd like to go through Exhibit 20 with you and ask
23 you what the source of Exhibit 20 was. Where did you get the
24 information that you put into Exhibit 20? Exhibit 20 is the
25 airtel; is that right?

1 A. It's a teletype.

2 Q. Teletype.

3 A. The source of that information was this memorandum,
4 which is Exhibit S.

5 A. Now, on October -- the information contained here is not
6 information that you received firsthand, is it?

7 A. That's correct.

8 Q. Could you tell us what is an airtel or rather what is a
9 teletype? I'm sorry.

10 A. The teletype is a just short of -- a telephone call is
11 the most expeditious means of communicating within the
12 Bureau. The teletype is your next fastest.

13 Q. Now, when you do a teletype, is there a difference
14 between teletypes and 302s?

15 A. Yes, it is.

16 Q. What is that difference?

17 A. Well, a teletype is an internal communication, you know,
18 within the Bureau. An FD-302 is based on your personal
19 observation of something whether it be an interview or a
20 review of records or what have you.

21 Q. In a case like Judge Nixon's case, were you required to
22 send teletypes periodically to headquarters?

23 A. That's correct.

24 Q. And what was the purpose of that?

25 A. Just to keep headquarters generally advised of the

1 progress of the case, what was happening. Of course, there
2 were frequent telephone calls, too, but this was normal
3 procedure.

4 Q. Did you have to be very specific in these teletypes?

5 A. No, because, you know, a lot of times there was
6 investigation going on that I could not be present at and I
7 would have to rely on what was available to put in this
8 general teletype.

9 Q. I'd like to draw your attention to Page 3 of the
10 teletype. It states starting in the middle: On November 1,
11 1984, meeting was held in Jackson between Fairchild, Baltar,
12 Fairchild's attorney, Wallace Gunn, Jackson SAC, and USDJ
13 Public Integrity Section attorneys, Reid H. Weingarten and
14 Marshall Jarrett. Then goes on to describe that meeting; is
15 that correct?

16 A. That's right.

17 Q. Were you at that meeting?

18 A. No, I wasn't. I was present in the office, but I was
19 not at the meeting.

20 Q. So you didn't hear what went on at that meeting?

21 A. I did not hear what went on at the meeting.

22 Q. You then go on to describe what happened at the meeting;
23 is that right?

24 A. Yes.

25 Q. Now, what you describe doesn't -- the meeting itself and

1 a description of the meeting doesn't appear on Exhibit S,
2 does it?

3 A. No.

4 Q. Could you tell us where you got the information that you
5 used in the teletype of what happened at the meeting?

6 A. It would have been either through a brief conversation
7 with the SAC or perhaps Weingarten or Jarrett. When the
8 meeting was over, you know, they had no reason to sit down
9 with me and brief me and I would have been, you know, trying
10 to pick up bits and pieces of what happened.

11 Q. Do you know where you got the information you put into
12 here?

13 A. No, I don't.

14 Q. I notice that it states in here that what Mr. Fairchild
15 said at that meeting you listed in the teletype. You state
16 that Mr. Fairchild said that in December of '82 he was
17 telephonically contacted by former Forrest County,
18 Mississippi, District Attorney Paul Bud Holmes and subject
19 Nixon who was on an extension phone with Holmes.

20 A. I wouldn't have -- at this point I wouldn't have any
21 idea where that came from.

22 Q. If I can direct your attention to the Exhibit S. That
23 information is contained in Exhibit S.

24 A. Uh-huh.

25 Q. And you had Exhibit S in your possession when you were

1 writing this teletype.

2 A. Right. Exhibit S is practically what the teletype is.

3 Q. All right. Does it refresh your recollection at all --

4 MR. STEWART: Objection, Your Honor. I'd like to
5 give the witness a chance to read these. The date of
6 December, '82, I don't believe appears in Exhibit S.

7 MR. COLE: Your Honor, he can cross-examine the
8 witness.

9 THE COURT: Right. This witness is here because
10 you kind of wanted him so I'll let him use leading questions
11 and you can cross-examine and we'll move on.

12 MR. STEWART: I'm not objecting to leading; I'm
13 objecting to inaccurate.

14 THE COURT: I understand. I'm not really
15 overwhelmed by this problem. In deference to you, I'm going
16 to let you explore it. Go ahead, Mr. Cole. Lets get on with
17 it.

18 Q. Exhibit S contains this information; does it not? It at
19 least contains the information concerning a telephonic
20 contact by Forrest County District Attorney Bud Holmes with
21 Nixon on the line?

22 A. It does not have the date of December 2nd on it.

23 Q. It does have the information about the phone call?

24 A. Yes.

25 Q. Is it possible that's where you got this information?

1 A. Yes. But where that December 2nd came from I don't have
2 any idea.

3 Q. Let's put December 2nd aside.

4 A. Yes.

5 Q. Just the information and the phone call, could that have
6 come from Exhibit S?

7 A. I'm sure it did.

8 Q. And is it possible that you put it in there not knowing
9 what happened at the proffer because you weren't there. But
10 assuming that's what had been represented, that's obviously
11 what was said?

12 A. At this date, I would not know.

13 Q. What day of the week was this that you wrote this?

14 A. It was November 2nd in 1984, a Friday.

15 Q. Was Weldon Kennedy there when you wrote this?

16 A. Weldon Kennedy was not there. Weingarten and Jarrett
17 were not there either. They had gone back to Washington.

18 Q. You were just doing your best; is that right?

19 A. This would have been Friday afternoon and I was doing
20 what I had to with what was available.

21 Q. Going down to Page 4 of the teletype, it describes a
22 meeting of November 2nd, 1984, attended by the United States
23 Department of Justice attorneys, John Baltar, the Jackson
24 SAC. Says the case agent; were you at that meeting?

25 A. I don't even recall the meeting. I was in the office

1 but I don't -- you know, I remember John Baltar being there
2 but as far as a meeting in which I was present, I have no
3 explanation of why case agent is in this teletype because, if
4 I was not there, there would be no reason for me to put it in
5 there.

6 Q. Do you know whether you wrote this last section?

7 A. I don't.

8 Q. Is it possible you didn't write this last section?

9 A. That's exactly true.

10 Q. Who would have written it if you didn't?

11 A. Probably the supervisor on the desk.

12 Q. And does that happen from time to time?

13 A. It does happen from time to time. I dictate on a tape
14 and give it to a stenographer and it will go to -- she'll
15 transcribe it and it will go to the desk supervisor and, if
16 he thinks there's additional information, he'll just add it
17 on. But my initials will be here as the person who dictated
18 it.

19 Q. Now, Mr. White-Spunner, you try to be as accurate as you
20 can in these memos; is that right?

21 A. Yes.

22 Q. But you're not always relying on firsthand information;
23 is that correct?

24 A. That's right.

25 Q. Every now and then there's inaccuracies in them; is that

1 right?

2 A. That's certainly true.

3 MR. COLE: Thank you, sir. I have no further
4 questions.

5 THE COURT: Mr. Stewart.

6 CROSS-EXAMINATION BY MR. STEWART:

7 Q. Afternoon, Mr. White-Spunner.

8 A. How are you?

9 Q. Let's just stay with that section of Exhibit 20 on the
10 fourth page, the description of meeting on November 2nd,
11 1984. Reference to the case agent. You were the case agent
12 on this case; were you not?

13 A. Yes, I was.

14 Q. But you don't recall this meeting one way or another?

15 A. I don't recall that meeting. I know I was in the
16 Jackson Office at the time.

17 Q. You knew Mr. Baltar?

18 A. Oh, yes.

19 Q. You dealt with him in the past?

20 A. Yes, I had met him several times in the past.

21 Q. Let's turn to the previous paragraph, the previous page,
22 during the lengthy conference it begins. Description of what
23 happened on November 1. That was the day before this
24 teletype was prepared, correct?

25 A. Right. November 1st.

1 Q. Do you have any recollection that you were briefed by
2 Mr. Jarrett or Mr. Weingarten or by Mr. Kennedy as to what
3 went on?

4 A. If I had been briefed, not in the sense that I was
5 sitting there and they said this is what happened, this, you
6 know, I would have had to pick up bits and pieces of
7 conversation as they went about their -- whatever they were
8 doing. I don't feel that they were compelled to brief me if
9 they didn't have any input into the teletype.

10 Q. You were the case agent, correct?

11 A. Yes.

12 Q. So there was an ordinary practice of keeping informed as
13 to what's going on in the case, yes?

14 A. I accept that. But in this instance where the case is
15 being handled by -- you know, you have your Public Integrity
16 Section involved and the SAC is taking a hands-on effort, a
17 proffer meeting and one that the FBI does not normally take
18 part in --

19 Q. Wasn't this a big deal when Wiley Fairchild came in with
20 a proffer?

21 A. That's right. But this is something that's usually
22 handled between the attorneys.

23 Q. And this was thought at the time before the meeting
24 occurred it might break the case open; isn't that right?

25 A. I can't recall what my feelings were at that time.

1 Q. This report is filled out the day after the meeting.

2 Did you make reports every two weeks or only when there was
3 an event worth reporting?

4 A. I don't recall. I would say normally you try to do it
5 weekly maybe on, you know, every Friday. It could have been
6 every two weeks, but I just don't recall at this time. And
7 this is not a report. It's a summary teletype, strictly a
8 summary.

9 Q. You're trying to inform the people on the other end.

10 A. Oh, yes.

11 Q. And you're trying to inform them as accurately as
12 possible.

13 A. That's right.

14 Q. And the question -- moving on to the next paragraph,
15 okay? On the next page. November 2nd. That's the same day
16 as the date of the teletype, correct?

17 A. Uh-huh.

18 Q. That event occurs right then; is that correct?

19 A. Correct.

20 Q. In most cases -- in any case in which you dealt with as
21 case agent, were plea offers made you didn't know about?

22 MR. COLE: Your Honor, I'm not sure what that has
23 to do with this.

24 THE COURT: I'll let him answer it. Overrule.

25 A. Were plea offers ever made that I didn't know about?

- 1 Q. Yeah.
- 2 A. I don't recall.
- 3 Q. This was a major case for the Jackson Office at that
4 time; was it not?
- 5 A. I think they would consider it that way, yes.
- 6 Q. And the home office in Washington was very interested in
7 it; was it not?
- 8 A. Yes, sir, I would say.
- 9 Q. And when you prepared this memorandum -- this teletype,
10 you made every effort to make it absolutely as accurate as
11 possible; did you not?
- 12 A. I would do that, yes.
- 13 Q. And it is -- as I understand your testimony you are not
14 saying that your supervisor added the last paragraph, you
15 don't know that that's true or not.
- 16 A. I don't know that that's true or not but it happens I'd
17 say frequently.
- 18 Q. Would he ordinarily in your experience add things he
19 thought were inaccurate?
- 20 A. Not intentionally, certainly not.
- 21 Q. He would try to be accurate as well?
- 22 A. He would try to be accurate, that's right.
- 23 Q. Did you view any notes by Mr. Kennedy or by Mr. Jarrett
24 or by Mr. Weingarten of this meeting?
- 25 A. No, I wouldn't have had that.

1 Q. You never saw any notes from that meeting or any other
2 meeting?

3 A. I don't recall any notes at all.

4 MR. STEWART: No further questions.

5 MR. COLE: I have nothing further, Your Honor.

6 THE COURT: You may step down. You're excused, Mr.
7 White-Spunner.

8 MR. COLE: Government's next and last witness, Your
9 Honor, Special Agent Donald Lawless.

10 DONALD LAWLESS, having first been duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION BY MR. COLE:

13 Q. Good afternoon, Agent Lawless. Would you please state
14 your full name and spell your last name for the record?

15 A. My name is Donald M. Lawless, L-a-w-l-e-s-s.

16 Q. What do you do for a living, sir?

17 A. I'm a Special Agent with the FBI.

18 Q. How long have you been with the FBI?

19 A. 19 years.

20 Q. Stationed in Hattiesburg?

21 A. Yes, sir.

22 Q. Did you have involvement in the investigation of Walter
23 Nixon and related individuals?

24 A. Yes, I did.

25 Q. Were you involved in the preparation for trial of that

1 case?

2 A. Yes, I was.

3 Q. I'd like to direct your attention to immediately prior
4 to trial or in that vicinity. Were you present at a witness
5 preparation session of Wiley Fairchild?

6 A. Yes, sir, I was.

7 Q. Where did that take place?

8 A. In Mr. Fairchild's office.

9 Q. Who was there?

10 A. Mr. Weingarten, the prosecutor, myself, Mr. Fairchild,
11 and Mr. John Baltar.

12 Q. Were you at that meeting the entire time?

13 A. Yes, sir.

14 Q. Did you bring anyone to that meeting with you?

15 A. Yes, sir.

16 Q. Who?

17 A. Mr. Weingarten.

18 Q. How would you describe what went on at that meeting,
19 Agent Lawless?

20 A. It was a typical witness preparation session. Mr.
21 Weingarten asked Mr. Fairchild questions that he intended to
22 ask him as a witness and the discussion was limited to that,
23 you know, to the questions and the answers that Mr. Fairchild
24 would give.

25 Q. At any time did you hear Mr. Weingarten instruct Mr.

1 Fairchild about what he had to say?

2 A. No, sir, I did not.

3 Q. Did you at any time hear Mr. Weingarten force Mr.
4 Fairchild or in any way compel him to give certain answers?

5 A. No, sir.

6 Q. Have you been to a number of witness preparation
7 sessions in your career?

8 A. Some.

9 Q. Was this any different than any of the others you've
10 been to?

11 A. Not really.

12 Q. Did you ever hear Mr. Weingarten tell Wiley Fairchild
13 how to answer questions about the Skip Jarvis tape?

14 A. No, sir.

15 Q. Did you ever hear Mr. Weingarten instruct Mr. Fairchild
16 or tell him how to answer questions about the previous FBI
17 interviews that he had given?

18 A. No, sir.

19 Q. How long did the session last, Agent Lawless?

20 A. I don't know exactly. It wasn't what I would call a
21 lengthy -- hour, maybe a little more.

22 Q. During this meeting, you said Mr. Baltar was there, was
23 he taking any notes?

24 A. I don't remember.

25 Q. At any time during this meeting did you look at his

1 notes?

2 A. No, sir.

3 Q. Did you see Mr. Weingarten look at his notes?

4 MR. STEWART: Objection. He can't remember if
5 there's any notes.

6 THE COURT: Overrule. You can answer. You can
7 cross-examine.

8 A. Would you repeat the question?

9 Q. Sure. Did you see Mr. Weingarten look at any notes of
10 Mr. Baltar's?

11 A. No, sir.

12 Q. Did you see Mr. Baltar show anybody any notes?

13 A. I don't remember. If he did, I don't remember it.

14 Q. Do you know if Mr. Weingarten showed anybody his notes
15 during that meeting?

16 A. No, sir.

17 Q. Did you ever see Mr. Baltar obtain Mr. Weingarten's
18 notes at that meeting and copy them word for word?

19 A. No, sir.

20 Q. What did Reid Weingarten tell Wiley Fairchild as far as
21 his testimony was concerned that day?

22 A. He told Mr. Fairchild that after asking all the
23 questions that he intended to hear and answer and discussing
24 the testimony that he expected to illicit from him, Mr.
25 Fairchild expressed some concern, you know, that, you know,

1 he hoped that he could remember, you know, what it was. Mr.
2 Weingarten said the only thing you can fall back on is tell
3 what you remember to be true, tell the truth, or words to
4 that effect.

5 Q. I'd like to show you what's previously been marked as
6 Exhibit 1. Prior to the pleadings being filed in this
7 action, the 2255 proceeding that we're in right now, Agent
8 Lawless, did you ever see that?

9 A. No, sir.

10 Q. Did you ever see it in the Government's files?

11 A. No, sir.

12 Q. Did you ever see it at that meeting with Mr. Fairchild?

13 A. No, sir.

14 Q. To your knowledge, was it ever in the possession of the
15 Government?

16 A. Not to my knowledge.

17 MR. COLE: Thank you, sir. No further questions.

18 CROSS-EXAMINATION BY MR. HOLLEMAN:

19 Q. Mr. Lawless, you say this is a typical witness
20 preparation?

21 A. I participated in a few witness preparations where --
22 it's been my experience that the Government prosecutor
23 interviews his witnesses before they take the stand or
24 perhaps the day before their testimony and when I say typical
25 I didn't see that this was any more or less than any others

1 that I've ever seen that different prosecutors ask the
2 questions.

3 Q. Was this on the day before the testimony?

4 A. I don't know.

5 Q. You don't know?

6 A. I don't know the day that it was.

7 Q. You don't know what meeting, you just know you're
8 talking about a meeting that you attended, aren't you?

9 A. I'm talking about the meeting with Mr. Fairchild where
10 Mr. Weingarten interviewed him as the prospective Government
11 witness -- well, as the Government witness.

12 Q. Now you say that -- do you remember what day of the week
13 this was on?

14 A. No, sir, I don't.

15 Q. What day did the trial start; do you remember?

16 A. I don't remember what day.

17 Q. Now you say this was a typical witness preparation.
18 This was certainly not a typical case, was it?

19 A. I agree with that.

20 Q. You were about to go on trial with the chief Federal
21 Judge of the Southern District of Mississippi, weren't you?

22 A. That's correct.

23 Q. And it was the greatest -- you don't remember what day
24 that trial started, the week I'm talking.

25 A. No, sir, I don't. It started on a Monday.

1 Q. Started on Monday?

2 A. Yes, sir.

3 Q. Was that a holiday; do you remember?

4 A. I don't remember.

5 Q. Well, would this have been on Sunday?

6 A. I don't remember.

7 Q. Did you make any notes?

8 A. Did I make any notes?

9 Q. Yes, sir.

10 A. No, sir, I didn't.

11 Q. I thought that FBI agents generally kept a pretty good
12 log on where they went and what time and what they were
13 doing.

14 A. I didn't make any relative to this.

15 Q. You mean you don't have any log that would show where
16 you were on the days preceding or when you attended this
17 meeting preceding this trial, the Nixon trial?

18 A. No, sir.

19 Q. Sir?

20 A. I said no, sir.

21 Q. No notes at all?

22 A. No.

23 Q. Let me ask you this question: Where is Mr. Fairchild's
24 office?

25 A. It's on Highway 49, Highway 49 North in Hattiesburg.

- 1 Q. What side of the road is it on?
- 2 A. As you're northbound, it would be on your right.
- 3 Q. You live there in Hattiesburg, don't you?
- 4 A. Yes, sir.
- 5 Q. You would know. I'm not trying to trick you on that.
- 6 A. Oh, I know, sir.
- 7 Q. All right. Now, in the office, can you describe for the
- 8 Court the office? Was this in the office?
- 9 A. It was in Mr. Fairchild's office.
- 10 Q. In his office in the building.
- 11 A. Yes, sir.
- 12 Q. Can you describe that office for me?
- 13 A. Yes, sir.
- 14 Q. Do that, please.
- 15 A. It's not a big room, it's -- he has a desk in it,
- 16 there's a couch and several chairs.
- 17 Q. A desk and several --
- 18 A. A desk, he has a -- at that time he had a couch in it
- 19 and several other chairs in the office.
- 20 Q. You've been in there several times, haven't you?
- 21 A. Yes, sir, I have.
- 22 Q. All right. And how many times did you go in there
- 23 relative to this case?
- 24 A. Prior to that, at least three that I can remember.
- 25 Q. At least three. And you, of course -- was Mr.

1 Weingarten with you on each of those occasions?

2 A. No, sir.

3 Q. He was not. You don't know how many times he went in
4 there.

5 A. I couldn't testify as to the exact number of times he
6 went in there. I can remember including the session that
7 we're talking about now, at least one other session.

8 Q. That he went with you?

9 A. Well, I went with him really.

10 Q. You went with him?

11 A. Yes, sir.

12 Q. Now, at the -- on this occasion, this was, you say, the
13 day before the trial?

14 A. I don't know if it was the day before the trial. It was
15 certainly a short period of time prior to when Mr. Fairchild
16 was expected to testify. At least within days.

17 Q. Days of that time.

18 A. Yes, sir. At least that. And I just don't know
19 exactly.

20 Q. It could have been as long as a week before?

21 A. I don't know.

22 Q. What time of the day was it?

23 A. It was in the evening, early evening.

24 Q. In the early evening?

25 A. Yes, sir.

1 Q. I take it by that when you say the early evening, it
2 would have been night.

3 A. It was dark.

4 Q. It was dark. And where did you -- was it a work day for
5 you?

6 A. I worked everyday during preparation for that trial and
7 during the course of it, everyday including Saturday and
8 Sunday.

9 Q. You would have been working whether it was a holiday or
10 Saturday or Sunday or whatever?

11 A. Yes, sir.

12 Q. And night I take it.

13 A. Well, whatever it was called for.

14 Q. Well, were you called for to work at night on this case?

15 A. Some, yes.

16 Q. How did that come about?

17 THE COURT: Why do I have to hear if he worked at
18 night and how that came about in this case? How is that
19 going to help me, Mr. Holleman?

20 MR. HOLLEMAN: If Your Honor please, there's a
21 serious question whether this is the same meeting. That's
22 the issue, you see.

23 THE COURT: Go ahead.

24 MR. COLE: Your Honor, if I may make a proffer in
25 that regard. We've heard from Mr. Weingarten, from Mr.

1 Baltar and Mr. Fairchild that there was only one major
2 witness preparation session. There were other minor sessions
3 but there was only one major one.

4 MR. HOLLEMAN: He said this was not a major, it was
5 typical.

6 THE COURT: Well, we'll let Mr. Holleman go on.
7 You know, sometimes by indirections we find directions out.
8 Go ahead, Mr. Holleman.

9 A. Ask your question again, please.

10 Q. I've forgotten it.

11 A. So did I.

12 MR. HOLLEMAN: Can you tell me?

13 (Question read.)

14 Q. How did it come about that you were called out at night
15 on this case?

16 A. Well, I wasn't called out at night.

17 Q. Well, called in?

18 A. Well, we went to work each morning, generally arriving
19 at the same time. And the agent stayed as long as the
20 prosecutors were there. When they went home, we went home.
21 If they were there at night, we were there at night.

22 Q. Was Mr. Weingarten there all day that day? I'm just
23 trying to find out how you set up on this meeting you're
24 telling us about.

25 A. Yes, sir, I understand. I'm trying to remember because

- 1 I want to be accurate on this.
- 2 Q. Yes, sir. Certainly.
- 3 A. He was certainly there that day. Whether he was there
4 all day, I don't know.
- 5 Q. You said he rode with you.
- 6 A. Yes, sir. Well, I drove him out.
- 7 Q. Where did you drive him from?
- 8 A. From the Federal Building.
- 9 Q. From the Federal Building?
- 10 A. Yes, sir.
- 11 Q. All right. And you came straight from the office and
12 went out there; is that what you're telling me?
- 13 A. Yes, sir.
- 14 Q. All right. And you said that you were there and Mr.
15 Weingarten was there, Mr. Baltar.
- 16 A. Yes, sir.
- 17 Q. And Mr. Fairchild.
- 18 A. Yes, sir.
- 19 Q. And in your affidavit you said there was possibly
20 another employee there, didn't you?
- 21 A. That's correct.
- 22 Q. You didn't say that while ago.
- 23 A. Well --
- 24 Q. Was there another employee there at this time?
- 25 A. I had thought that Wallace Gunn was there.

1 Q. The lawyer?

2 A. Yes, sir.

3 Q. Well, he wouldn't have been an employee, would he?

4 A. Wallace Gunn is not an employee.

5 Q. He's an attorney, isn't he? You know him. You think he
6 was there?

7 A. I really don't know whether he was or not.

8 Q. That is your impression. You have no notes but it's
9 your impression that Attorney Wallace Gunn was there.

10 A. At the time that I made my statement, I thought that he
11 could have been, and I wasn't sure. But, you know, I thought
12 that maybe he had been.

13 Q. All right. That's your impression as you sit there
14 now.

15 A. That's the best I can recall.

16 Q. That Mr. Wallace Gunn, the attorney, was there.

17 A. Yes, sir.

18 Q. Was he assisting in the witness preparation, answers and
19 so forth?

20 A. I have no idea. If he was there, I have no idea what he
21 was doing.

22 Q. Were you on the couch?

23 A. No, sir.

24 Q. Where were you?

25 A. I was sitting in a chair generally in front of Mr.

1 Fairchild's desk but back away from it -- between me -- I was
2 back away from it.

3 Q. Where was Mr. Weingarten?

4 A. He was sitting in a chair sort of to the -- as you face
5 Mr. Fairchild's desk sort of -- it would be the right end
6 facing --

7 Q. And where was Mr. Baltar?

8 A. He would have been behind Mr. Fairchild's desk and in my
9 field of view between Mr. Weingarten and Mr. Fairchild.

10 Q. Mr. Fairchild's desk is where the Clerk is here, then he
11 would have been over behind where Mr. Fairchild was sitting
12 where the Clerk is. He was over there somewhere?

13 A. Yes, and further that way.

14 Q. And you were sitting here.

15 A. Yes, sir.

16 Q. And Mr. Weingarten was between you and the desk?

17 A. That's the mental image that I have.

18 Q. And do you have a mental image of where Mr. Wallace
19 Gunn, the attorney, was?

20 A. I just remember seeing his face.

21 Q. Do you remember where you saw his face? I take it he
22 would have been on the couch. That's about the only place
23 left.

24 A. Generally in that area over there.

25 Q. That's the only place left. The couch is right over

1 here to the right. Did he have his tape recorder?

2 A. I don't remember seeing any tape recorder.

3 Q. All right. Now, in this situation you say with you
4 there behind Mr. Weingarten, Mr. Weingarten here, Mr. Baltar
5 over behind the desk and Mr. Fairchild, you went through some
6 questions and answers?

7 A. I didn't go through any questions and answers.

8 Q. Mr. Weingarten did.

9 A. Yes.

10 Q. Did you make any notes?

11 A. I did not.

12 Q. And did he ask Mr. Fairchild a question and he would
13 answer it?

14 A. Yes.

15 Q. Did he make any notes?

16 A. Did Mr. --

17 Q. Weingarten.

18 A. I'm not sure.

19 Q. Did you see Mr. Baltar make any notes?

20 A. I don't remember him making any. I don't remember -- I
21 can't sit here and testify truthfully that I remember anybody
22 making any notes, Mr. Fairchild, Mr. Weingarten, or Mr.
23 Baltar.

24 Q. Nobody was making notes?

25 A. I don't know.

1 Q. You don't remember?

2 A. I don't remember.

3 Q. Okay. Did you see any outline or anything Mr. Baltar --
4 Mr. Weingarten have any kind of an outline that he brought
5 with him in there?

6 A. What I remember is he had his yellow legal paper or pad
7 which contained -- you know, he had jotted down briefly the
8 questions. I assume he had jotted them down briefly because
9 he didn't write them there.

10 Q. Such as whether or not the telephone call came before or
11 after the case was passed to the files?

12 A. I don't remember specific questions but generally
13 questions that he intended to ask Mr. Fairchild.

14 Q. You knew there were about two or three in your meeting
15 with him whether the telephone call came before or after the
16 case was passed to the file.

17 A. I'm sorry. Say that again.

18 Q. You knew there were two or three critical things, didn't
19 you? One was whether or not the telephone call came before
20 the Drew Fairchild case was passed to the file; do you
21 remember that?

22 A. I remember the telephone call, the issue of it.

23 Q. And when it came, you remember that, don't you?

24 A. When he's questioning him?

25 Q. Yes, sir.

1 A. No, sir, I don't.

2 Q. You don't remember that. And you remember whether or
3 not the mineral deeds took place before or after the drug
4 bust.

5 A. I remember that situation.

6 Q. You remember that discussion?

7 A. Well, I don't remember him talking about it. I have no
8 recollection -- I could not sit here and tell you exactly
9 what he asked him. I just don't remember it.

10 Q. You mean in this typical witness preparation you don't
11 recall on that day any conversation about those critical
12 points of the case?

13 A. I remember him asking the questions that he was going to
14 ask him. I don't remember the order in which he asked him or
15 specifically what. I mean, at the time I probably knew
16 clearly what the critical issues was but, I mean, I just I
17 can't -- right now I can't sit here and tell you what was
18 said.

19 Q. When these questions were being asked, did Mr. Baltar
20 participate in that?

21 A. I think that maybe he -- sometimes Mr. Fairchild would
22 ask him a question, you know.

23 Q. He'd ask Mr. Baltar?

24 A. And he would answer, whatever it would be.

25 Q. And he'd answer it.

1 A. I couldn't tell you what question it was, but I mean,
2 there was a general discussion.

3 Q. You sat -- you participated in the trial, didn't you?

4 A. Yes, sir. I was present during the trial.

5 Q. You were at the table, weren't you?

6 A. Yes, sir.

7 Q. With counsel?

8 A. Yes, sir.

9 Q. Weingarten and them. Were you there the day Mr.
10 Fairchild testified?

11 A. Yes, sir.

12 Q. Did you ever go back to the witness room where he was?

13 A. No, sir.

14 Q. Who was with Mr. Fairchild?

15 A. I have no idea.

16 Q. You didn't see Mr. Baltar?

17 A. No, sir.

18 Q. And as you sat at the table and listened to Mr.
19 Fairchild, did you hear him testify?

20 A. Yes, sir.

21 Q. Made a credible witness?

22 A. I don't think I'd be a good judge of that.

23 THE COURT: Mr. Holleman, I know it's very
24 difficult for any lawyer to just let go and say, you know,
25 we're done. But I don't know what you're doing here. I

1 mean, I've got transcripts galore, and I need Holleman on
2 Lawless on the trial on what was said? So, you know, go
3 ahead, but --

4 MR. HOLLEMAN: Your Honor, my main thrust is to
5 show whether or not he's talking about the same meeting.

6 THE COURT: You got him commenting upon what was
7 testified to at trial and whether he saw Wiley Fairchild
8 during the trial and that. What's that got to do with
9 whether it's the same meeting or not?

10 MR. HOLLEMAN: Well, that was a new field.

11 THE COURT: Yes, it was.

12 MR. HOLLEMAN: Yes, sir. I can see that, if Your
13 Honor please.

14 Q. You were there during the entire trial.

15 A. Yes, sir.

16 Q. All right. Did you ever discuss with Mr. Fairchild his
17 testimony at the trial?

18 A. No, sir.

19 Q. Before he testified?

20 A. No, sir.

21 Q. Or afterwards?

22 A. No, sir.

23 MR. HOLLEMAN: No further questions, Your Honor.

24 MR. COLE: I have no further questions, Your Honor.

25 THE COURT: You may step down, Mr. Lawless.

1 THE COURT: Is that your last witness, Mr. Cole?

2 MR. COLE: That's my last witness, Your Honor.

3 THE COURT: Will the attorneys approach?

4 (At the bench.)

5 THE COURT: You have no further oral testimony?

6 MR. COLE: No.

7 THE COURT: You have no further oral testimony?

8 MR. STEWART: Correct.

9 THE COURT: No rebuttal, okay. With regard to the
10 Grand Jury testimony of Mr. Rodney Fairchild, I find that the
11 material which was used in cross-examination is the only
12 material that's relative to these questions in this case and
13 I will not order that it be given to the Defendant. I find
14 no need for that. Nothing in there that calls for it. I'm
15 going to return it to you, Mr. Cole, and needless to say you
16 should retain it if anybody subsequent to Nangle feels that
17 it should be treated otherwise.

18 MR. COLE: Very well, Your Honor.

19 THE COURT: Now, it is not my practice and I gather
20 also that rather than oral argument the lawyers would prefer
21 to submit a brief memo in support of your positions. Mr.
22 Stewart?

23 MR. STEWART: Yes, sir.

24 THE COURT: Mr. Cole?

25 MR. COLE: Yes, Your Honor.

1 THE COURT: It's not my practice to ever wait for a
2 transcript. It's just I've never done it as long as I've
3 been a Judge. I think I better quickly make an exception
4 because in one long case I tried I remember that ultimately
5 it turned out that we did brief dependent upon a transcript.
6 But I realize that one is being ordered here. I don't want
7 to disadvantage either of the parties but I know both of you
8 have and I'm going to tell you I think briefed this case and
9 the Petitioner has briefed it legally what I deem to be on
10 point. I realize that you want to gather your thoughts and
11 fit that law to the facts. You got three lawyers and one
12 lawyer for the Government who have been taking notes. I
13 think you got a pretty good idea who said what so I'd prefer
14 to order a briefing schedule without regard to the transcript
15 delivery date which you think -- let's go off the record.

16 (Off the record.)

17 THE COURT: I will give Mr. Stewart on behalf of
18 the Petitioner until September the 16th to file which
19 includes delivery to me his post-trial brief in this matter.

20 Mr. Cole, on behalf of the Government until the 26th to
21 do the same with regard to his brief or memo in this matter.
22 Mr. Stewart until the 30th to file whatever reply he may or
23 may not deem necessary to file. And the case will then be
24 submitted to me as of that time.

25 Have we ruled on all of your exhibits? Because there

1 were some papers that came up later that haven't been
2 admitted. Maybe a paper or two that you have.

3 (Off the record.)

4 THE COURT: The Government's Exhibits have all been
5 admitted?

6 MR. COLE: There's one that I would like to admit
7 as well, Exhibit U, which is just the highlight of the motion
8 for a new trial by Mr. Fawer.

9 THE COURT: This is a view of the cross-examination
10 of Fawer?

11 MR. COLE: That's correct, Your Honor.

12 THE COURT: Well, it's a part of the record. I'll
13 admit U.

14 MR. STEWART: No objection.

15 THE COURT: It's part of the file anyway.

16 (Exhibit U received into evidence.)

17 THE COURT: And you had some papers.

18 MR. STEWART: Exhibit 22, Exhibit 22-A and Exhibit
19 23 which were identified by Mr. Weingarten. Here is Exhibit
20 U that I've admitted. And Mr. Stewart has 22, 22-A, and 23.
21 The rest of them does Mrs. Harrelson have?

22 MR. STEWART: We'll work those out.

23 THE COURT: Work those out before you leave the
24 Court here today.

25 MR. COLE: My only issue on 22 and 22-A and 23 is

1 that we have no foundation laid testimonially as to where
2 they were found. All we have is Mr. Stewart's
3 representation. We have nothing in the record.

4 THE COURT: I haven't even seen them. That's where
5 I'm at a total disadvantage. So all we have is his
6 handwriting.

7 MR. COLE: And there's another aspect of that, Your
8 Honor. I think that we need to go into this, because not all
9 of it and I think Mr. Stewart will agree, is the same
10 handwriting on those documents. For example, the scratch out
11 on 22 of Bud and the writing in of George Phillips is in a
12 different hand than the rest of the document. Wouldn't you
13 agree to that?

14 MR. STEWART: It appears to be but Mr. Weingarten
15 did not make that point during the examination. You don't
16 have a basis for objecting.

17 MR. COLE: As well as on 22-A there is another
18 handwriting that appears to be different.

19 MR. STEWART: I agree.

20 MR. COLE: And as far as 23 goes I have the same
21 objection with all of them as to where they come from, where
22 were they found, we have no evidentiary basis for that.

23 THE COURT: Where did they come from?

24 MR. STEWART: They came from Mr. Fairchild's
25 office. There was a closet in an office that used to be John

1 Baltar's.

2 THE COURT: When did they discover them? When
3 Baltar cleared out?

4 MR. STEWART: They knew they were there and we
5 thought they were there because Mr. Baltar had told us about
6 them.

7 MR. HOLLEMAN: He told us they were there, Judge.

8 THE COURT: I'll admit them for what value they
9 have. Take them along with the case.

10 MR. COLE: Judge, just if I can complete the record
11 as to their representations as to where they were found. It
12 is my understanding that the House of Representatives has
13 been in rather direct contact with Mr. Fairchild and his
14 attorneys concerning this matter seeking any and all things
15 they had relevant to them and they've never gotten those.
16 And I've been informed this is the first they've heard of
17 it. I'm not accusing Mr. Stewart or Mr. Holleman or Mr.
18 Holleman of any impropriety but I don't think it's beyond any
19 others that may be involved in this matter.

20 MR. STEWART: I think that's utterly irrelevant.

21 THE COURT: Okay. One other matter.

22 MR. HOLLEMAN: I just want to point out to the
23 Court and I know the hour is late but we just went up there
24 and went through the files and just got that out of there.
25 It's been there the whole time.

1 THE COURT: There has been a motion for reduction
2 of sentence filed in this matter so that we can make a record
3 on this and I think I have told you gentlemen informally some
4 time ago that I was going to withhold ruling on that until
5 the completion of this and that's still my feelings.

6 I also told you that I had not looked at the various
7 pieces of material that were filed in it, that they came
8 sealed and they have remained sealed and that is still true
9 to this point. When I say material I'm referring to obvious
10 letters and things in support of that motion. I will tell
11 and I think I've already gotten the message through my own
12 probation officers to have Mr. Bonafenz update that just so
13 that you're aware of that because that's my general procedure
14 any time I have a motion for a reduction.

15 My general procedure being to refer the matter to my
16 probation office and I would assume I would do that in this
17 case and I have so requested my probation officer to talk to
18 Mr. Bonafenz in that regard but I told him there was no great
19 rush. Bonafenz was aware that there was a hearing here. So
20 that's the status of that.

21 I have not to my knowledge received anything from you
22 with regard to that, have I?

23 MR. COLE: Yes. I filed a response.

24 THE COURT: I may have put it all in a file because
25 I just don't want to consider it. Go ahead.

1 MR. COLE: In that regard I recall at the status
2 conference that you had requested and Mr. Holleman had agreed
3 to provide me with any letters that they had or any lists of
4 people or anything like that. I haven't gotten it yet.

5 THE COURT: I recall that.

6 MR. HOLLEMAN: I apologize. I will.

7 MR. COLE: Sure.

8 MR. HOLLEMAN: We explained it. We may not have
9 all of them.

10 MR. COLE: Right. You said you're going to send me
11 what you got.

12 MR. HOLLEMAN: We'll send you what we've got.

13 MR. HOLLEMAN, JR: My fault.

14 MR. COLE: No problem.

15 THE COURT: As I say, I have done nothing about it
16 and haven't looked at any material including, of course, Mr.
17 Cole's, and I will do so in the course of events.

18 Okay. Gentlemen, that will conclude.

19 (Bench conference concluded.)

20 THE COURT: We'll be in recess.

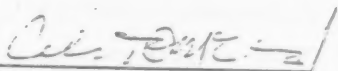
21 (Recess.)
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CERTIFICATE

I, Celeste O. McClelland, Registered Professional Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing 546 pages contain a full, true, and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 6th day of September, 1988.


Celeste O. McClelland

My Commission Expires:

June 29, 1991

FILE COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

WALTER L. NIXON, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. H88-0052(G)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

PETITIONER'S PREHEARING BRIEF

The hearing on August 29, 1988 will focus on the relationship between the prosecutors and Wiley and Drew Fairchild. Considerable factual material already has been submitted to the Court in connection with our initial Petition and is today being submitted in the form of descriptions of expected testimony, exhibits and additional evidence. Moreover, such materials are no substitute for the actual testimony of the witnesses at the hearing. Accordingly, this Brief will not repeat those factual assertions, but will concentrate on the following legal arguments:

- 1) Explaining the controlling legal standards for the claims presented;
- 2) The weakness of the prosecution's case at trial, which makes the constitutional violations presented here that much more significant.

I.

THE CONTROLLING LAW

The issues set for hearing arise at the intersection of two critical constitutional doctrines based upon the Due Process Clause: First, that prosecutors must disclose to a defendant evidence favorable to him, Brady v. Maryland, 373 U.S. 83 (1963), including material that would impeach the credibility of a key government witness, United States v. Bagley, 473 U.S. 667, 676 (1985); and, second, that prosecutors may not elicit from government witnesses, nor may they sit quietly while government witnesses volunteer, inaccurate or incomplete testimony, Napue v. Illinois, 360 U.S. 264 (1959); Giglio v. United States, 405 U.S. 150 (1972).

The basic outline of the contentions set for hearing in this proceeding is (i) that the government failed to disclose to Nixon's counsel its understandings and full relationship with Wiley and Drew Fairchild, (ii) that the credibility of Wiley Fairchild -- and of the entire prosecution -- would have been seriously impaired if all of those understandings and the full relationship had been disclosed, and (iii) that the prosecution elicited incomplete and misleading testimony by both Wiley and Drew Fairchild about their understandings and relationship with the prosecutors.

The deceptions and duplicity of the prosecutors in this case are fairly captured by comparing the prosecutors' description of the decision to prosecute Drew Fairchild in a

letter to defense counsel a few days before trial (Petitioner's Ex. 5) with their statements to their superiors at the time of the decision to prosecute (Petitioner's Ex. 7):

Weingarten Internal Memorandum
of March 22, 1985

Strategically, the decision whether to indict Drew is a difficult one. The arguments in favor of indicting him are: (1) We need the cooperation of Drew and his father, Wiley, in prosecutions of . . . Judge Nixon. To the extent that indicting Drew now is desired by both Drew and his father, failure to do so could jeopardize the investigation. (Emphasis added.)

Weingarten Letter to
Defense Counsel of
January 7, 1986

While the request of Fairchild's attorney [that Drew be indicted federally] was noted, it was but one of several factors weighing into the decision to recommend an indictment. The primary factor was our belief that by March, 1985, the drug case was a federal matter that could best and most fairly be handled in Federal Court.

This duplicity extended to testimony presented by the prosecutors at trial. Compare the testimony of Drew Fairchild with the prosecutors' internal memorandum:

Weingarten Internal Memorandum
of March 22, 1985

Ironically, our indictment of Drew would be a "favor" to him, and it is not in our interest to appear to be helping him too much when he is our witness.

Drew Fairchild Trial
Testimony (Trial Tr. 204)

Q. Has the federal government cut you any breaks in this investigation?

A. No, ma'am.

When all of the facts are laid out, this Court will find strikingly apt the observations of Judge Godbold in ordering

issuance of a writ of habeas corpus in Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986) (citations omitted):

The government has a duty to disclose evidence of any understanding or agreement as to prosecution of a key government witness The government, in this case, did not disclose. The government has a duty not to present or use false testimony. . . . It did use false testimony. If false testimony surfaces during a trial and the government has knowledge of it, as occurred here, the government has a duty to step forward and disclose. . . . It did not step forward and disclose when [the witness] testified falsely. The government has a duty not to exploit false testimony by prosecutorial argument affirmatively urging the jury the truth of what it knows to be false Here the government told the jury 'there has been no promises made to [the witness] for his testifying in this case' when it knew the contrary was true.

As Judge Godbold cautioned in rejecting the prosecutors' arguments, "It is a constitution we deal with, not semantics," and the "constitutional concerns address the realities of what might induce a witness to testify falsely, and the jury is entitled to consider those realities in assessing credibility." Id. at 1465. The jury in this case was denied that opportunity.

A. Verbal Or "Tentative" Understandings With Witnesses Must Be Disclosed Along With Written Plea Agreements

The courts repeatedly have insisted that the prosecution's obligation to disclose understandings with key witnesses is not confined to those understandings that have been reduced to writing. Indeed, the courts have noted that verbal or implicit understandings may have an even stronger impact on a

witness and therefore may be more important to disclose than formal written plea agreements.

In Campbell v. Reed, 594 F.2d 4 (4th Cir. 1979), a state prisoner won a writ of habeas corpus on the ground that the state allowed his codefendant and purported accomplice to deny the existence of any plea agreement. At the time of that testimony, the witness' attorney and the prosecutor had a verbal plea agreement which had not been disclosed to defense counsel. The witness had not been told of the agreement, but had been told by his attorney that if he testified against the defendant "everything would be all right" and there were "things going on that it would be better for him not to know."

The Fourth Circuit emphasized that the implicit or tentative understanding could have a significant impact on the witness. The Court stated that the witness' ignorance "of the exact terms of the plea agreement only increases the significance, for purposes of assessing credibility, of his expectation of favorable treatment." Id., at 7. The Court added, "a tentative promise of leniency might be interpreted by a witness as contingent upon the nature of his testimony. Thus, there would be a greater incentive for the witness to try to make his testimony pleasing to the prosecutor." Id., at 7-8.

The same points were made in Haber v. Wainwright, 756 F.2d 1520 (11th Cir. 1985), which concerned a petition for a writ of habeas corpus by a state prisoner. The prosecutor had "advised" a key government witness that "he would not be prosecuted for any of his prior crimes in exchange for his

testimony" against Haber, and the state argued that such "advice" did not constitute an understanding that had to be disclosed to defense counsel. Id. at 1523. The Eleventh Circuit remanded for a factual hearing on the claim, squarely rejecting the state's argument (id. at 1524): "More importantly, Giglio did not speak in terms of the state's duty to disclose only bona fide enforceable grants of immunity. Its reach extends to 'any understanding[s] or agreement[s].'" Giglio, 405 U.S. at 155." The Court concluded (id.):

Even mere 'advice' by a prosecutor concerning the future prosecution of a key government witness may fall into the category of discoverable evidence since it could constitute an informal understanding which could directly affect the witness's credibility before the jury.

These principles were applied to affirm the grant of a new trial two years after the conviction in United States v. Shaffer, 789 F.2d 682 (9th Cir. 1986), when the defendant discovered previously undisclosed evidence that a key government witness (i) had been a paid government informant during a longer period than had been disclosed to defense counsel, (ii) had received more in expense payments from the government than previously disclosed, (iii) had amassed greater assets through illegal activity than previously disclosed, and (iv) had never been pursued by the government for civil tax liability.

The Ninth Circuit emphasized that even though this evidence did not squarely establish the existence of any further agreement between the government and the witness, it "could have

been used to discredit" the witness at trial. Id. at 689. The Court flatly rejected the government's contention that these additional facts did not have to be disclosed to the defendant because they did not involve an "explicit agreement." The Court wrote (id. at 690):

While it is clear that an explicit agreement would have to be disclosed because of its effect on [the witness's] credibility, it is equally clear that facts which imply an agreement would also bear on [the witness's] credibility and would have to be disclosed.

The Ninth Circuit stressed that the undisclosed elements of the relationship between the witness and the government constitute "exculpatory material that could indicate the 'tip of the iceberg' of a secret deal of leniency" for the witness. Id. at 691.

The Fifth Circuit in United States v. Franklin Nixon, 634 F.2d 306 (5th Cir.), cert. denied, 454 U.S. 828 (1981), adopted precisely this reasoning. In that case, an important government witness protested before trial that he was not willing to testify. The prosecutor assured the witness in a meeting that he would not prosecute the witness because to do so would violate the witness' speedy trial rights. The Fifth Circuit held that although there was "no agreement in express terms," there was an implicit understanding that had to be disclosed to the defendant. Id. at 312. Because the defendant in that case learned of the implicit understanding during trial, however, no new trial was required.

See Kirchels v. Long, 425 F. Supp. 505 (S.D. Ala. 1976), aff'd 564 F.2d 414 (5th Cir. 1977) (granting habeas corpus writ when government witness had undisclosed verbal "understanding" with prosecutor that his cooperation would be considered when prosecutor made sentencing recommendation, which "would clearly reflect on his [the witness's] credibility").

B. Due Process Protects A Defendant's Right To Impeach Government Witnesses And The Prosecution Itself

As the Supreme Court held in Bagley, supra, evidence that impeaches government witnesses may be as important to the defense of a case as evidence supporting the defendant's innocence. The Supreme Court wrote that in considering Brady violations, "This Court has rejected any such distinction between impeachment evidence and exculpatory evidence." 473 U.S. at 676. See Giglio, supra.

Before Bagley had been handed down, the Fifth Circuit had fully recognized the importance of impeaching evidence both in determining the scope of the government's Brady obligations and also the government's obligation not to elicit or allow its witnesses to give false or misleading testimony. In United States v. Barham, 595 F.2d 231 (5th Cir. 1979), cert. denied, 450 U.S. 1002 (1981), the court of appeals granted a motion for new trial on the ground that three government witnesses were allowed to convey "the false impression that none of these three witnesses had received any promises of leniency or other considerations." Id. at 241. The Fifth Circuit ruled that it was "immaterial whether or not the prosecution consciously

solicited the false evidence . . . [or] whether the false testimony directly concerns an essential element of the Government's proof or whether it bears only upon the credibility of the witness." Id. at 241-42.

The three witnesses who gave misleading testimony in Barham were corroborated by three other witnesses, but Chief Judge Brown insisted that the defendant was still entitled to a new trial because credibility was such an important part of the case (id. at 242-43):

We reiterate that credibility was especially important in this case in which two sets of witnesses -- all alleged participants in one or more stages of a criminal enterprise -- presented irreconcilable stories. Barham was entitled to a jury that, before deciding which story to credit, was truthfully apprised of any possible interest of any Government witness in testifying falsely. Knowledge of the Government's promises to Joey Shaver and Diane and Jerry Beech would have given the jury a concrete reason to believe that those three witnesses might have fabricated testimony in order to avoid prosecution themselves or minimize the adverse consequences of prosecution.

Similarly, the government may not argue that because the jury knows about some of the agreements between the prosecutors and the witness, evidence of other understandings would be "merely cumulative of [the witness's] possible bias." Brown v. Wainwright, supra, 785 F.2d at 1466. When evidence of further understandings will "introduce[] a new source of potential bias," id., it must be disclosed to the defendant. As the Fifth Circuit held in United States v. Sanfilippo, 564 F.2d 176, 178 (5th Cir.

1977), "The fact that the history of a witness shows that he might be dishonest does not render cumulative evidence that the prosecution promised immunity for testimony."

The Fifth Circuit also has recognized that a defendant is entitled to impeachment evidence which may impeach the investigation itself. As the Court wrote in Lindsey v. King, 769 F.2d 1034, 1042 (5th Cir. 1985), a defendant is entitled to evidence that would both impeach a key witness and would aid in the "discrediting, in some degree, of the police methods employed in assembling the case against him." This holding was cited with approval in Bowen v. Maynard, 799 F.2d 593 (10th Cir.), cert. denied, 107 S.Ct. 458 (1986), granting a writ of habeas corpus to a state prisoner in part because the withheld evidence would have impeached the prosecution itself (id. at 613):

The withheld evidence also raises serious questions about the manner, quality, and thoroughness of the investigation that led to Bowen's arrest and trial. A common trial tactic of defense lawyers is to discredit the caliber of the investigation or the decision to charge the defendant, and we may consider such use in assessing a possible Brady violation.

C. The Importance Of Prosecutorial Reinforcement
Of The False Impression Created By False Testimony
Or Undisclosed Evidence

One of the striking features of the trial in this case is that the prosecutor in closing argument argued strongly -- over and over again -- that Wiley Fairchild had absolutely no motive to slant his testimony in favor of the government. The prosecutor made this argument to the jury, we believe, because

the other central government witness, Paul "Bud" Holmes, had very limited credibility. It is important to review all of the prosecutor's testimonials to Wiley Fairchild's credibility, however, to understand the importance of the undisclosed information concerning the prosecution's understandings and relationship with Wiley and Drew Fairchild.

At the very beginning of his closing argument, the prosecutor insisted, "I submit to you, ladies and gentlemen, the issue for you with regard to Wiley Fairchild is did he tell the truth at this trial?" Trial Tr. 1839. The prosecutor then phrased the critical question that he would pose again and again: "Ask yourself, did he [Wiley Fairchild] have any motive to lie?" Did he demonstrate any animosity whatever to Judge Nixon? Did he demonstrate any animosity or favor to the government?" Id. (emphasis added).

The prosecutor then addressed a key disagreement in the testimony of Judge Nixon and Wiley Fairchild. Judge Nixon recalled the initial conversations of his investment with Fairchild as occurring in 1979, while Fairchild at trial placed those conversations after the point in the fall of 1980 when Drew Fairchild was involved in the federal drug prosecution. This disagreement was important to the government theory that the investment had something to do with Drew Fairchild's drug case, and the prosecutor thumped for Wiley Fairchild's credibility on this point (Tr. at 1840) (emphasis added):

Very important question asked Wiley Fairchild, when was that first approach [about the investment]? Wiley Fairchild had no diary, had no calendar, but his testimony was that it occurred when Drew's case was pending in federal court. Now that answer is dramatically different than Judge Nixon's testimony, that the deal originated, according to Judge Nixon in early 1979, Wiley Fairchild got involved in later 1979. There is a year difference there. Somebody is wrong. Ask yourself who it may be. Ask yourself what motive in the world Wiley Fairchild would have to testify falsely about anything.

This passage is particularly important now, moreover, because Wiley Fairchild has testified before Congress that he was wrong in dating Carroll Ingram's first approach concerning the investment, and that the approach actually came in late 1979 or early 1980, as Judge Nixon and Carroll Ingram always have testified. Cong'l Testimony, 7/7/88, p. 65.

The prosecutor then addressed the backdating of the royalty deeds that were delivered to Judge Nixon. Once again, the prosecutor rested his case on Wiley Fairchild's supposed lack of a motive to lie (Trial Tr. 1841; (emphasis added): "He [Wiley Fairchild] said that Ingram said to him that they [the deeds] would, quote, look better if they were backdated. Why would Wiley Fairchild say that if that didn't happen? Where is Wiley Fairchild's axe to grind here?" The prosecutor returned to this theme a few minutes later, on the question of the dating of the phone call to Wiley Fairchild from Bud Holmes' farm (Trial Tr. 1850):

Wiley Fairchild never moved off that point. What's it to him at this point in time? There is no hook into Wiley Fairchild, he's not being prosecuted for anything at this point. Was it not simply an effort by this man to give his best testimony? If you believe that, if you believe Wiley Fairchild on that point, a crucial point we submit, it puts the lie to Judge Nixon's testimony.

And in his rebuttal statement, the prosecutor one more time passionately argued to the jury that Wiley Fairchild must be believed because he had no reason to lie, and the prosecution had no hold over him (Trial Tr. at 1967) (emphasis added):

What hammer does the United States have over Wiley Fairchild at this time? We gave that lever up. We could have deferred that sentence. We could have kept him unsentenced until he testified.

Was Bud Holmes sentenced? Yeah, Bud Holmes was sentenced. What leverage did the United States have over Bud Holmes. I'll tell you what leverage we had, we have the leverage every prosecuting attorney has for perjury. The same with Wiley Fairchild. But that's the only leverage. We gave up the leverage. We had no leverage

The courts have uniformly condemned such prosecutorial reinforcement of the prejudicial impact of nondisclosures and false testimony. In Sanfilippo, supra, the Fifth Circuit ordered a new trial because a key witness evaded cross-examination questions designed to bring out an understanding previously disclosed by the prosecutor that the witness would not be prosecuted in another case. In closing argument, the prosecutor's statements are eerily familiar to those made in this case. The Sanfilippo prosecutor argued that when the witness had

testified, "He had already been sentenced by the court. There was absolutely nothing hanging over his head. He could have refused. I mean he already got his part. The cooperation was made known. We lived up to our part of the deal and His Honor gave him a sentence of eighteen months. I mean, he really didn't have to." Judge Roney's opinion emphasized that prosecutorial reinforcement of the false testimony (564 F.2d at 179):

If [the witness] did not testify, presumably he would have been prosecuted in that [other] case. If he did testify, he would not be prosecuted. One can hardly imagine a more compelling fact that the jury should have in order to properly evaluate whether a witness of doubtful credibility was in fact being credible in his trial testimony. Thus the Government not only permitted false testimony of one of its witnesses to go to the jury, but argued it as a relevant matter for the jury to consider. Whether either instance alone would merit reversal, we need not decide, for together they do.

A similar situation arose in Brown v. Wainwright, *supra*, which granted a writ of habeas corpus to a state prisoner. A key witness did not disclose during cross examination that he had been promised by the state that he would not be prosecuted for a crime if he testified against the defendant. The prosecutor in his closing argument defended the credibility of the witness: "And I submit that there has been no promises made to [the witness] for testifying in this case. He testified to that from the witness stand. He has absolutely nothing to gain by testifying against this particular individual." 785 F.2d at 1460. In granting the writ, the Court of Appeals stressed that

the prosecutor "argued that the key witness received no promises" Id. at 1464; see id. at 1461 ("Here the government told the jury 'there has been no promises made to [the witness] for his testifying in this case' when it knew the contrary was true"). See Giglio v. United States, supra, 405 U.S. at 151-52 (prosecutor reinforced in closing argument the witness' false denial that he had not received any promises for his testimony); United States v. Iverson, 637 F.2d 799, 804 & n.15 (D.C. Cir. 1980) (ordering new trial when government witness falsely testified that she already had been sentenced and therefore implied that she had nothing to gain by testifying, and the "prosecutor not only did not at any time correct [the witness's] false testimony; he actually reiterated it in his closing argument, thereby compounding the prejudicial impact").

II.

THE PROSECUTION CASE AGAINST JUDGE NIXON WAS WEAK AND THE PROSECUTION'S NONDISCLOSURES AND MISLEADING TESTIMONY WERE MATERIAL

In ruling on this Petition, this Court will have to determine not only that the government failed to disclose critical information about its relationship with Wiley and Drew Fairchild, and then allowed misleading testimony to be presented on that point, and then reinforced that false impression in closing argument. The Court also will have to decide whether these constitutional violations require a new trial.

In reaching this second determination, the Court will have to apply the legal standard announced in United States v. Bagley, supra, that a new trial must be ordered when "there is a reasonable probability that, had [the evidence] been disclosed to the defense, the result of the trial would have been different." 473 U.S. at 682. The Supreme Court in Bagley emphasized that nondisclosed impeachment evidence is more likely to have a materially negative impact on the defense when the defense specifically requested the information that was withheld (473 U.S. at 682-83):

And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption The reviewing court should assess the possibility that such [adverse] effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response.

Judged under this standard, there can be no question concerning the materiality of the nondisclosures in this case, nor of the centrality of Wiley Fairchild's credibility to the case. As is evident from the closing arguments at trial, Bud Holmes as a witness carried very little credibility whatever. To illustrate this point, we also submit as Attachment A to this Brief our recent Memorandum to Congress on the facts in this

case, which details at pp. 38-56 the severe credibility issues with respect to Holmes' testimony. ^{1/} Consequently, the prosecutor attempted to bolster Holmes' testimony by seeking corroboration from Wiley Fairchild on the tiniest details. See Trial Tr. 1859-61, 1878. Similarly, Carroll Ingram, a witness of considerable credibility, totally exonerated Nixon of wrongdoing on the Fairchild investment and was only glancingly relevant to the perjury counts (although the prosecutor attempted to rest as much of the perjury case as possible on Ingram). Id. at 1870, 1979-80.

As a result, the prosecutor was reduced, as detailed above, to defending tenaciously Wiley Fairchild's credibility, pitting him against Judge Nixon repeatedly in an attempt to undermine Judge Nixon's testimony. See pp. 11-13, above. In a perjury case, more than many other cases, credibility is the central issue in dispute. Defending Wiley Fairchild's credibility was far easier for the prosecutor, however, because the prosecutor had concealed many elements of the relationship and understandings between the prosecutors and Wiley Fairchild.

By the same token, the defense launched a spirited attack on the prosecution itself, charging it with abusing

^{1/} The impeachment inquiry by the Subcommittee on Civil Rights and Civil Liberties of the House Judiciary Committee has consumed six hearing days. The former prosecutor testified on June 9 and 10, 1988, while Wiley Fairchild testified on July 6 and 7, Bud Holmes on July 7 and 8, Carroll Ingram on July 8, and Judge Nixon on July 12. For the convenience of the Court, we are submitting a copy of the transcripts of those sessions. The impeachment inquiry remains pending before the House Subcommittee.

witnesses and cutting ill-considered deals in single-minded pursuit of Nixon as the "big prize." Trial Tr. 1881-84, 1933-34, 1950-51, 1956-58. That attack would have been powerfully reinforced -- and the credibility of the prosecution itself significantly reduced -- if the full facts had been known about the relationship and understandings between the prosecutors and Wiley and Drew Fairchild.

The potential importance of such evidence to Nixon's defense is patent, and our entitlement to a new trial is squarely supported by the case law in the Fifth Circuit. As noted above, in United States v. Barham six prosecution witnesses gave essentially the same testimony against the defendant, but three of those witnesses misstated or concealed their understandings with the prosecution. The Fifth Circuit ruled that a new trial was required because the case was so plainly a contest of credibility, even though three government witnesses would have been unimpeached by the withheld evidence (595 F.2d at 243):

In this case, in which credibility weighed so heavily in the balance, we cannot conclude that the jury, had it been given a specific reason to discredit the testimony of these key Government witnesses, would still have found that the Government's case and Barham's guilt had been established beyond a reasonable doubt.

A similar holding was announced in Lindsey v. King, supra, which involved a failure to disclose Brady material that would have undermined the credibility of one of the two identification witnesses presented by the State. The Fifth

Circuit rejected the state's argument that no new trial was needed because there was still one unimpeached identification witness (769 F.2d at 1042) (emphasis added):

We are tempted, but not persuaded, by this arithmetical approach; our experience at the bar has been that positive identification by two unshaken witnesses possesses many times the power of such an identification by one only, and that the destruction by cross-examination of the credibility of one of two crucial witnesses -- even if the other remains untouched -- may have consequences for the case extending far beyond the discrediting of his own testimony.

At trial, Wiley Fairchild's testimony was an important part of the prosecutions on Counts III and IV of the indictment. Count IV alleged that Nixon had intervened with Bud Holmes in order to influence Holmes to handle the Drew Fairchild case in a way that would please Wiley Fairchild. The prosecution's theory was that the best objective evidence of this allegation was that the call from Bud Holmes' farm occurred before Drew Fairchild's case was passed to the files in December 1982.

But no two witnesses agreed when that phone call had happened. Bud Holmes placed it in May 1982; Carroll Ingram, with only indirect information about the call, placed it in late 1982, but said the date could have been different. On direct examination, Wiley Fairchild insisted that the call occurred before Drew's case was passed to the files in December 1982, but on cross-examination, Wiley Fairchild agreed that the call

happened after that event, but then suddenly reverted to his first version of the date of the call. See Trial Tr. 637-61.

Imagine how much more effective the defense attack on Count IV would have been if counsel, in explaining Wiley Fairchild's inconsistent testimony, could have pointed to all of the pressures, understandings and undisclosed dealings between the prosecutor and Wiley Fairchild. What would the jury have thought if it had known that Wiley and his representatives had asked the prosecutor on several occasions about a possible pardon and that the prosecutor had made clear that a pardon might turn on the quality of Wiley's "cooperation" in the Nixon case? Or that Wiley Fairchild thought the prosecutor still might somehow drop the charges against him? Or that Wiley Fairchild was grateful that the federal prosecutor had fulfilled his promise to help Wiley Fairchild's son, Drew? What if counsel could have pointed out that the prosecutor had participated in creating a "script" for Wiley Fairchild to study before testifying, and that the script specifies that the phone call occurred before Drew's case was passed to the files?

By the same token, the prosecution's theory in Count III -- the charge that Nixon falsely denied that Holmes "dicuss[ed]" Drew's case with him -- turned both on the allegation that Holmes volunteered on that night to pass Drew's case to the files, and on the prosecution's bolstering of Holmes with Wiley Fairchild's recollections. Without Wiley Fairchild to use to prop up Holmes' implausible testimony, Count III might have turned out very differently. Again, the defense would have been significantly

strengthened on Count III if the undisclosed evidence had been known.

But the importance of the undisclosed understandings and relationship with Wiley and Drew Fairchild centrally involves the legitimacy of the prosecution itself. At bottom, Nixon was accused of having intervened to help "a smuggler" (Drew) to preserve his financial relationship with the smuggler's father, and then of having lied to cover up his actions. Trial Tr. 1874-75. But we have learned only this summer that the federal government, in its desperation to preserve its relationship with the smuggler's father in this case, took extraordinary and undisclosed measures to help the drug smuggler, and has attempted to cover that up. The prosecutors' internal memorandum of March 22, 1985 provides a startling revelation of the prosecutors' efforts to help the "drug smuggler" to preserve their relationship with his father to preserve their case (Petitioner's Exhibit 5):

Drew's lawyer has contacted us requesting that we indict Drew federally so that he can plead guilty to a federal drug charge. Under Mississippi law "a conviction or acquittal under federal law . . . for the same act is a bar to prosecution in this state." Mississippi Code §41-29-151. Drew's lawyer is convinced that the only way for Drew to get a fair sentence is for his case to be in the federal system.

* * * *

Strategically, the decision whether to indict Drew is a difficult one. The arguments in favor of indicting him are: (1) We need the cooperation of Drew and his father, Wiley, in prosecutions of Bob Royals (presently under

indictment), Bud Holmes (whom we hope to indict soon) and Judge Nixon. To the extent that indicting Drew now is desired by both Drew and his father, failure to do so could jeopardize the investigation.

* * * *

There are also valid strategical reasons not to indict Drew, however. They are: (1) Ironically, our indictment of Drew would be a "favor" to him, and it is not in our interest to appear to be helping him too much when he is our witness. To minimize this, any plea agreement we made would contain no "deals" or promises to recommend a lenient sentence, and at sentencing we would lay out the facts of Drew's smuggling involvement as well as his cooperation in as even handed a fashion possible. (2) To the extent that a prosecution of Bud would focus on his "grabbing" Drew's case, by indicting Drew we place ourselves in what looks to be the same posture by "taking" the case from the state. This presumably would never be admissible in a prosecution of Holmes, however, as the handling of Drew's case after Bud left office in 1984 is irrelevant. (3) Similarly, to the extent that we might argue in a prosecution of Holmes that he corruptly let Drew's case drag on for years with no disposition, we undercut our argument as to its impropriety when, right after the state decides to prosecute Drew vigorously, we step in and prevent it. Again, however, there does not appear to us to be any way this evidence would be admissible in a prosecution of Bud.

Bluntly put, this material would have devastated the government's case against Nixon. This memorandum proves -- does not suggest, but proves -- that the federal prosecutors consciously intervened to protect Drew Fairchild from a long state prison sentence, that they did so to satisfy Wiley Fairchild, that they believed that if they did not do so it might "jeopardize the investigation," and that they fully understood

that it was a "favor" that needed to be concealed and covered up or else it would be used against them in court. How could the prosecutors, with all of that revealed to the jury, have accused Walter Nixon of any wrongdoing in connection with Drew Fairchild's case?

III.

DUE PROCESS BARS THE GOVERNMENT FROM WINNING CONVICTIONS BASED ON INACCURATE TESTIMONY FORCED FROM WITNESSES THROUGH OFFICIAL COERCION

In Petitioner's Motion To Amend Petition to Vacate Convictions and Sentence, we note that only recently have we discovered that certain trial testimony of Wiley Fairchild was inaccurate, and was, in effect, dictated by the prosecutor as the price for Mr. Fairchild's plea bargain. These facts are set forth in Mr. Fairchild's congressional testimony correcting his statements at trial (Cong'l Tr. of 7/7/88, pp. 13-14, 64-65) and in the Affidavit of John D. Baltar of August 3, 1988 (attached to our Motion to Amend and to Petitioner's Witness List). The principles of due process simply cannot abide a criminal conviction gained by such means.

Again, the issue presented arises at the intersection of two different lines of cases. First, the courts have insisted that when the prosecution obstructs the defendant's ability to present evidence in support of his defense, a conviction may not stand. Second, the courts have recognized that when a witness

reveals that his trial testimony was significantly inaccurate, and when that recantation is credible and material to the conviction, a new trial should be granted. Both of those principles apply in this situation. After explaining the factual basis for this argument, this section will address each legal point.

A. Wiley Fairchild's Testimony Was Dictated By The Prosecutor In Return For A Plea Bargain

As part of our preparation for the August 29 hearing, counsel for Judge Nixon had a greater opportunity to interview Mr. Baltar and explore all relevant testimony he might have. In the course of this process, Mr. Baltar described in much greater detail the methods that were used by the federal prosecutors to oppress and manipulate Wiley Fairchild and, in effect, to coerce Wiley Fairchild to change his testimony to suit the prosecutors. Mr. Baltar's recollections coincide in important respects with Mr. Fairchild's testimony before Congress, but provides considerably more detail about the key events.

1. Mr. Fairchild's Initial Testimony Was "Not A Smoking Gun" That Would Get Him A Plea Bargain -- Mr. Fairchild recalled that when he first told the federal prosecutors about the phone call from Bud Holmes' farm, the prosecutor told him that that was not a smoking gun that would get him a plea bargain. Cong'l Tr. 7/7/88, pp. 7, 56. And Mr. Fairchild told Congress that his trial testimony had been wrong about the dating of Carroll Ingram's first approach concerning a possible investment with

Judge Nixon. Mr. Fairchild told Congress that the approach really came in late 1979 or early 1980, well before the marijuana bust at the Hattiesburg Airport that implicated Drew Fairchild. Mr. Baltar remembers that the prosecutor told Wiley Fairchild that his recollection of the phone call was not good enough to get him a deal, and remembers further that the prosecutor then, in effect, dictated to Mr. Fairchild the testimony he would have to give in order to get a plea bargain (Baltar Aff., 11 11-12):

[At a November 1, 1984 meeting], Mr. Weingarten stated to Mr. Fairchild and to us that this was "not a smoking gun." Mr. Weingarten stated in order for Mr. Fairchild to get a plea bargain, he would have to first admit the oil and gas investment with Judge Nixon was an illegal gratuity. He further stated that the evidence showed that Mr. Fairchild had entered into the oil and gas investment after Drew Fairchild's drug bust in August of 1980 and he would have to change his testimony and state that that's how it occurred.

Mr. Weingarten told Mr. Fairchild that the phone call was made before Drew Fairchild's case was passed to the files by Bud Holmes. Mr. Weingarten stated that Mr. Fairchild would have to testify that Judge Nixon had placed the phone call and that this occurred prior to the case being passed to the files in December of 1982. It was clear that if Mr. Fairchild could provide that testimony then a "plea bargain" would be possible.

2. The Fairchild-Jarvis Tapes of April 1984 --

Mr. Fairchild told Congress that his statements had been truthful during the tape-recorded conversations with Skip Jarvis in April 1984. Cong'l Tr. 7/7/88, pp. 13-14. Those statements were

entirely exculpatory of Judge Nixon. See Petitioner's Ex. 9. Yet at trial, Mr. Fairchild refused to adopt those statements to Mr. Jarvis as true, Trial Tr. 685-66, and said only that he had told Jarvis what he wanted Jarvis to hear. Mr. Fairchild told Congress that he did not recall whether he had reviewed that point with the prosecutors, Cong'l Tr. 7/7/88, pp. 72-73, but Mr. Baltar does remember that episode, which occurred during the witness preparation session in Mr. Fairchild's office just before Judge Nixon's trial (Baltar Aff., ¶ 17):

Mr. Weingarten also stated that he was concerned that the defense lawyer would use the recorded conversation Mr. Fairchild had with Robert Jarvis in April of 1984 against him. He told Mr. Fairchild when asked about the Jarvis tape recorded conversation, he was to say that he was not being honest with Jarvis at that time and was telling Jarvis just what he wanted him to hear.

3. The Prosecutor's Promise To Help Drew --

Mr. Fairchild told Congress that he asked the federal prosecutor to help his son, Drew, with his legal problems, and that the prosecutor said that he would do what he could to help Drew. Cong'l Tr. 7/6/88, p. 113. Mr. Baltar recalls that exchange and places it in November 1984, before the plea agreement was reached. Mr. Baltar's recollection helps to explain the prosecutors' statements in their March 22, 1985 memorandum asking for authority to indict Drew Fairchild on federal drug charges. The prosecutors had made a promise to Wiley Fairchild to help his son, and if they did not live up to that promise, it might

"jeopardize the investigation" which was designed to catch the "big prize."

It is illuminating to apply Mr. Baltar's recollections to the transcript of the November 1, 1984 "proffer" by Wiley Fairchild (Pet. Ex. 11). At the top of page 6 of that transcript, Mr. Fairchild recounted some of the "facts" that had just been dictated to him by the prosecutor, and then said, "I'm getting confused." The prosecutor broke in and said, "No, that's true, that's true. So far, so good." Further on in the interview, Mr. Fairchild again apparently lost his train of thought after describing what Judge Nixon supposedly said during the telephone call from Bud Holmes' farm. Mr. Fairchild stated, "We said something else, you know, I'd done got the important thing, I don't remember." Id., p. 8 (emphasis added). Mr. Fairchild apparently was saying that he had covered the "important" things -- those statements that the prosecutor had dictated to him. When that "proffer" is read in the context of Baltar's Affidavit, the obvious coaching and manipulation of this frightened elderly man become even more clear.

Mr. Baltar has provided further evidence about which we have not had an opportunity to question Mr. Fairchild. For example, he explains that the federal prosecutor repeatedly urged Mr. Baltar to rehearse Mr. Fairchild to give before the grand jury and at Judge Nixon's trial the testimony that the prosecutor had dictated. Baltar Aff., ¶¶ 12, 17. Similarly, Mr. Baltar recalls at least two occasions on which the federal prosecutor

was told -- once by Mr. Baltar and once by Mr. Fairchild -- that Mr. Fairchild would say whatever the prosecutor wanted him to say at Judge Nixon's trial. Id. at ¶ 15.

. B. The Prosecution Obstructed Nixon's Ability To Present A Defense

The Supreme Court has recognized that a defendant has a constitutional right under the Due Process Clause to "present his own witnesses to establish a defense." Washington v. Texas, 388 U.S. 14, 19 (1967). Applying this principle, the Fifth Circuit held in United States v. Henricksen, 564 F.2d 197 (5th Cir. 1977), that a conviction cannot stand when the government has a plea bargain with a potential defense witness that provides that the plea bargain will be void if the witness testifies "in any manner regarding Henricksen." Because the witness then refused to testify at Henricksen's trial, the court of appeals reversed the conviction, holding that "Substantial Government interference with a defense witness' free and unhampered choice to testify violates due process."

In United States v. Hammond, 598 F.2d 1008 (5th Cir. 1979), a conviction was reversed because an FBI agent spoke to a defense witness during a recess in the trial and suggested that if the witness continued to testify, he would have "nothing but trouble" in another pending investigation. The Fifth Circuit found that the agent's conduct constituted "governmental interference [that] deprived the defendant of his due process right to present his witnesses." Id. at 1013.

In this case, the government's interference with the witness occurred long before Judge Nixon's trial, and involved flat coercion to induce Wiley Fairchild to change his recollection in several critical respects: (i) when Carroll Ingram approached him concerning an investment with Judge Nixon; (ii) when the phone call from Bud Holmes' farm occurred; (iii) who placed the phone call from Bud Holmes' farm; (iv) the truth of Wiley Fairchild's statements during two tape-recorded conversations with Skip Jarvis in April 1984. Both Wiley Fairchild and John Baltar recall that Mr. Fairchild's first description of the phone call from Bud Holmes' farm was not "good enough" to get him a plea bargain, and he had to improve it as the prosecutor dictated.

This sequence establishes that the prosecutor effectively prevented Nixon from putting on his defense -- and from presenting Wiley Fairchild as a defense witness -- by coercing Fairchild into giving inaccurate testimony that was slanted against Nixon. A similar argument was presented unsuccessfully in United States v. Binker, 795 F.2d 1218, 1228-29 (5th Cir. 1986), cert. denied, 107 S.Ct. 1287 (1987), concerning a witness with a plea bargain with the government who changed his grand jury testimony in a manner unfavorable to the defendant. The Court held, first, that the defense had notice of the witness intimidation at the time of trial and improperly failed to seek relief at trial. Because of that delay, the claim was evaluated only under the "plain error" doctrine. No plain error was found because there was "no suggestion that the government did not act

in good faith." Id. at 1229. That reasoning would not apply to this case, in which the government dictated to Mr. Fairchild the testimony he would have to give in order to get a plea bargain, and then -- as we have argued previously -- concealed from Nixon many of its promises to, inducements to and arrangements with Wiley Fairchild and his son, Drew. See United States v. MacCloskey, 682 F.2d 468, 479 (4th Cir. 1982) (reversing conviction when prosecution "suggested" to witness' attorney that witness "would be well-advised to remember the Fifth Amendment," and witness then refused to testify for defense).

C. A Conviction Should Not Be Permitted to Stand On Inaccurate Testimony

The Fifth Circuit has announced a five-part test for considering a motion for a new trial based upon newly discovered evidence of false testimony (United States v. Adi, 759 F.2d 404, 407 (5th Cir. 1985)):

(1) the evidence was discovered following trial, (2) the failure to learn of the evidence was due to no lack of due diligence on the part of the defendant, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material, and (5) the evidence is such that a new trial will probably produce an acquittal.

The court of appeals also noted that "recanting affidavits and witnesses are viewed with extreme suspicion by the courts." Id. at 408. The Fifth Circuit noted that at trial the witness had not been shaken on cross-examination, and the trial court had observed the witness' demeanor. In light of all these

circumstances, the court of appeals found no basis for reversing the trial court's denial of a new trial.

Although we recognize that the standard for a new trial can be a demanding one, there are many circumstances present here which establish the plain basis for vacating Judge Nixon's conviction. The witness, Wiley Fairchild, was severely shaken on cross-examination, and at one point repudiated the testimony that the prosecutor had dictated to him that the phone call from the farm had occurred before Drew's case was passed to the files.

Moreover, Mr. Fairchild's recent testimony before Congress is not the sort of voluntary recantation that may raise questions concerning the witness' motives; rather, Mr. Fairchild was forced to testify in an official proceeding and simply began to tell the truth by departing from the script previously forced on him by the prosecutor. In addition, the inaccurate testimony here was created by rank prosecutorial misconduct and overreaching, and therefore raises considerably greater constitutional claim. Due process surely is offended whenever a defendant is convicted on the basis of inaccurate testimony; but due process is outraged when the inaccurate testimony has been contrived, dictated and forced upon the witness by the government itself.

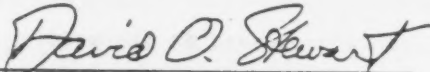
Finally, the impact of this further information on Nixon's trial is indisputable. The testimony dictated by the prosecutor was directly relied upon by the prosecution throughout the trial. And this court must determine, as the Second Circuit wrote in United States v. Stofsky, 527 F.2d 237, 246 (5th Cir.

1975) (emphasis added), "whether the jury probably would have altered its verdict if it had had the opportunity to appraise the impact of the newly-discovered evidence not only upon the factual elements of the government's case but also upon the credibility of the government's witness." At this point, there can be no credibility to Wiley Fairchild's trial testimony against Judge Nixon.

CONCLUSION

Based on the foregoing case law and constitutional principles, and on the facts to be adduced at the hearing, petitioner is entitled to vacation of his convictions and sentence and a new trial.

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

Date: August __, 1988

FILE COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

B

WALTER L. NIXON, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 888-0052(G)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

PETITIONER'S PREHEARING STATEMENT
OF OTHER EVIDENCE

Pursuant to Paragraph (3) on page 3 of this Court's Order of June 29, 1988, Petitioner hereby submits as "other evidence" relevant to the pending Petition the transcripts of testimony and other proceedings before the Subcommittee on Civil Rights and Civil Liberties of the House Judiciary Committee on June 9-10, 1988, and July 6, 7, 8, and 12, 1988. These transcripts include the testimony in the Subcommittee's impeachment inquiry of the federal prosecutor (Reid Weingarten), Wiley Fairchild, Paul "Bud" Holmes, Carroll Ingram and Judge Walter L. Nixon, Jr., as well as argument presented by Nixon's counsel. Petitioner has highlighted for this Court's attention sections of the following testimony:

Reid Weingarten (June 9, 1988), pp. 113-42;
Wiley Fairchild (July 6, 1988), pp. 103-17;
Wiley Fairchild (July 7, 1988), pp. 7-8, 55-74.

This evidence establishes, inter alia, the following facts:

1. That the prosecutor stated to Wiley Fairchild's counsel at the time of his plea agreement in November 1984 that if the prosecutor became convinced that there was no gratuity paid to Nixon, he would dismiss the charges against Wiley Fairchild.
2. That Wiley Fairchild was very concerned about getting an executive pardon for his conviction and that he and his representatives raised the subject with the federal prosecutor on numerous occasions, and that the prosecutor stated that the Pardon Attorney would want to know whether the prosecutor was satisfied with Wiley Fairchild's cooperation in the investigation, and that the prosecutor would do what he could to assist Wiley Fairchild in acquiring a pardon after the Nixon trial. Wiley Fairchild thought the prosecutor would help him acquire a pardon if the prosecutor was pleased with his testimony at the Nixon trial.
3. That Wiley Fairchild expressed concern to the federal prosecutor about prospect of a long state prison term for his son, Drew Fairchild, and the federal prosecutor said that he would do what he could to help Drew Fairchild.
4. That in a conference with John Baltar and the federal prosecutor, the prosecutor provided to Wiley Fairchild the questions and answers for his testimony at the Nixon trial, which were then recorded for Wiley Fairchild to study, all with the prosecutor's knowledge and participation.

5. That the federal prosecutor told Wiley Fairchild's counsel what Mr. Fairchild should state at his sentencing proceeding, and Mr. Fairchild was afraid to say anything different.

This evidence supports all of the contentions listed for hearing in the Court's Order of June 29, 1988.

Respectfully submitted,

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FILE COPY C

IN THE UNITED STATES DISTRICT COURT
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WALTER L. NIXON, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. H88-0052(G)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

PETITIONERS' WITNESS LIST

In accordance with the Order of June 29, 1988 in this case, Petitioner submits this list of anticipated witnesses including the elements identified in Paragraph (1) of page 2 of that Order. We note at the outset that the presentation of a witness's testimony cannot be fully predicted by any counsel and that the representations made in this pleading as to the testimony of each witness is based upon our best understanding and expectation. Variances between the representations in this pleading and the actual testimony may well occur. Moreover, although we are listing all anticipated witnesses and the relevant testimony we now expect to elicit, additional witnesses and additional subjects of testimony may develop by the time of the hearing.

1. John Baltar, currently residing in Jackson, Mississippi, formerly worked as administrative assistant to Wiley Fairchild of W. R. Fairchild Construction Co. in Hattiesburg,

Mississippi. Mr. Baltar will testify that at Mr. Fairchild's request, he attended a number of meetings with federal prosecutors and agents in 1984 and 1985 in connection with the prosecution of Mr. Fairchild and, later, of Judge Walter L. Nixon, Jr.

Mr. Baltar will testify to the matters covered in the attached Declaration of John D. Baltar (Attachment A), which previously was submitted in this case, plus the matters covered in the attached Affidavit of John D. Baltar (Attachment B), which was recently prepared in response to the Court's remarks at the status conference on June 29, 1988 concerning the specificity of Mr. Baltar's previous Declaration.

Mr. Baltar's anticipated testimony will support all three contentions listed in this Court's Order of June 29, 1988 as the subject of the hearing in this proceeding. It is reasonably anticipated that Mr. Baltar's direct testimony will take no longer than an hour and that cross-examination would not exceed that amount of time.

2. Wiley Fairchild, the principal operating partner in W.R. Fairchild Construction Co. of Hattiesburg, Mississippi, was a prominent government witness at trial. He will testify on the matters which are covered in the Declaration of Wiley Fairchild previously submitted in this proceeding (Attachment C) and in his testimony at pp. 103-17 of the congressional hearings on July 6, 1988, and pp. 55-74 of the hearings of July 7, 1988. For the

Court's convenience, the entire transcript of those hearings is being submitted by petitioner with these prehearing pleadings.

Mr. Fairchild's testimony will support all three contentions on which the Court ordered a hearing in its Order of June 29, 1988. His direct examination is reasonably expected to last between 30 and 60 minutes, and the cross-examination could consume less time than that.

3. Glenn L. White, district attorney for the Twelfth Circuit District of the State of Mississippi, which includes Hattiesburg, succeeded Bud Holmes in that position in 1984. Mr. White will testify that in early 1985 he was reluctant to recommend that Drew Fairchild be sentenced to no time in jail on pending drug charges, but was compelled to do so under Mississippi law because his predecessor, Bud Holmes, had agreed to make that recommendation. At that time, Mr. White will testify, federal prosecutor Reid Weingarten advised Mr. White that he might appear in state court during Mr. Fairchild's sentencing to state the extent of Mr. Fairchild's cooperation with the federal government and to support Holmes' prior plea agreement with Mr. Fairchild and recommendation of no jail time. Mr. White will testify that as the date for Drew Fairchild's sentencing approached, Mr. Weingarten stated that he would not appear personally in state court but instead sent a letter by private carrier marked "extremely urgent" in which he stated generally the cooperation of Mr. Fairchild in the federal investigation. Mr. Weingarten requested in the letter that if

the letter were submitted to the sentencing court, it should be submitted under seal, which was done.

Mr. White also will testify that after the state court judge refused to accept the sentencing recommendation in Mr. Fairchild's plea bargain, Mr. Fairchild withdrew his guilty plea and entered a plea of not guilty. Thereafter, Mr. White was freed from the restrictions of the previous plea agreement, and insisted that Mr. Fairchild be sentenced to two or three years in prison. Mr. Fairchild's counsel, Barry Hess, represented to Mr. White that, based upon the pre-sentence report in Mr. Fairchild's federal case, the federal court likely would sentence Mr. Fairchild to two or three years confinement. Mr. White then consulted with federal prosecutor Reid Weingarten who confirmed that, based upon the pre-sentence report, Mr. Fairchild was likely to be sentenced to two or three years in federal prison. The federal prosecutor made no statement to Mr. White as to whether he would make any recommendation as to Mr. Fairchild's sentence. Based on these representations, Mr. White agreed to recommend a three year sentence for Mr. Fairchild in state court to run concurrent with any federal sentence, plus a \$5,000 fine and costs of Court. The final agreement in state court provided that any time served under the federal sentence would satisfy any state custody requirement, and Mr. White agreed to that arrangement only because he had been led to believe that the federal sentence would be two or three years.

Mr. White's testimony will support the first two contentions listed in the Order of June 19, 1988 setting a hearing in this matter. His testimony is reasonably expected to last no longer than fifteen minutes and cross examination to consume less time than that.

4. Michael S. Fawer -- principal trial counsel for Judge Nixon. He will testify concerning the pretrial discovery requests submitted on behalf of Judge Nixon, the discovery order entered by the Court, and conversations on Brady and Jencks Act material between him and the prosecutors. Mr. Fawer also will explain the background of the letter of January 7, 1986 to him from Reid Weingarten, which purports to describe the federal government's reasons for prosecuting Drew Fairchild.

With respect to the trial of Judge Nixon, Mr. Fawer will explain the importance of the credibility or lack of credibility of the government's central witnesses, and of the credibility or lack of credibility of the prosecution itself. He will describe the equivocal nature of the government's proof at trial and the importance of the prosecutor's repeated protestations that the government had no leverage over its witnesses who therefore supposedly had no motive to lie.

Mr. Fawer will testify as to the state of his knowledge during Nixon's trial concerning the various elements of the relationship between the federal prosecutors and Wiley and Drew Fairchild, which previously will have been described by Messrs. Baltar, Fairchild and Hess. Mr. Fawer will testify that he

diligently sought to develop such evidence before and during trial through discovery motions, through witness interviews, and through cross-examination, but that these matters were concealed from him.

Mr. Fawer will testify that the information concerning the government's undisclosed promises to and relationship with Wiley Fairchild would have provided strong weapons for defending the case by impeaching certain factual statements testified to by Wiley Fairchild and on which the prosecutor placed great emphasis, and by casting doubt on the legitimacy of the government's investigation. Mr. Fawer also will testify concerning the lengthy jury deliberations in this case (18 hours) and the many notes from the jury to the Court, including a note reporting deadlock at one point, all of which indicate that the jury ultimately returned a compromise verdict. Based on all of these factors, Mr. Fawer will testify to his opinion that if the jury had known about the matters detailed above, the verdicts on Counts III and IV might well have been different.

Mr. Fawer's testimony will support all three contentions which have been set for hearing by the Court's Order of June 29, 1988. Direct examination should require no more than an hour, while cross-examination may well not exceed an hour.

5. Barry Hess -- Mr. Hess served as counsel for Wiley Fairchild in connection with his criminal indictment in the fall of 1984. The government has submitted an Affidavit by Mr. Hess in this proceeding already. Mr. Hess has advised that his

recollection of the events of this case is subject to refreshment by his own records, which he has not yet had an opportunity to review.

Mr. Hess met in Hattiesburg and Jackson on a number of occasions with the federal prosecutor during the pretrial period, and the prosecutor always inquired as to whether Mr. Fairchild wanted to strike a plea deal. Largely because of the uncertain impact at that time of the bail pending appeal provisions of the Bail Reform Act of 1984, Mr. Wiley Fairchild directed that a plea arrangement be reached. Mr. Hess recalls Mr. Wiley Fairchild saying that he wanted to be home for Christmas. Mr. Hess' major object during the plea negotiation was to assure that the government would recommend a non-custodial sentence, which he succeeded in negotiating. During those negotiations, Mr. Wiley Fairchild submitted to several debriefings and interviews by federal agents. During these conversations, Mr. Hess recalls Mr. Weingarten saying that he was looking for a smoking gun. John Baltar, who worked for Mr. Fairchild, was present at all such meetings. Mr. Hess does not recall being present at any meeting during which Wiley Fairchild's statement was tape-recorded by the government.

At the time Wiley Fairchild's plea arrangement was reached, the federal prosecutor stated that he would dismiss the charges against Mr. Fairchild if he became convinced that Judge Nixon's investment with Wiley Fairchild had nothing to do with Drew Fairchild's criminal prosecution. Mr. Hess did not place

any particular weight on the remark by Mr. Weingarten, and when Mr. Hess related the remark to Mr. Fairchild, he so advised Mr. Fairchild.

During the debriefings of Mr. Fairchild before his appearance before the grand jury in November 1984, Mr. Fairchild modified his recollection of the date when he had first been approached by Carroll Ingram concerning an investment by Judge Nixon. Initially, Mr. Fairchild said that the approach from Carroll Ingram had occurred before the August 1980 drug "bust" at the Hattiesburg Airport, which implicated Drew Fairchild. Mr. Fairchild amended his recollection when he began to negotiate for a plea bargain and stated that the approach from Carroll Ingram had come after the drug bust at the airport.

Mr. Hess also recalls the government exhibiting documentary evidence purporting to establish when the telephone call had been placed from Bud Holmes' farm by Bud Holmes and Judge Nixon to Wiley Fairchild's house. Based in part upon that apparent documentary evidence, Mr. Fairchild stated that the telephone call from the farm had occurred before Drew Fairchild's case was passed to the files.

During the debriefings of Wiley Fairchild in 1984, the prosecutors asked very pointedly about the accuracy of Mr. Fairchild's statements during a tape-recorded conversation with Skip Jarvis in April of 1984. Mr. Fairchild never stated that his statements to Skip Jarvis during that tape-recorded telephone conversation had been false.

After Wiley Fairchild's plea was entered in November 1984, Mr. Hess had less active involvement in the case and did not insist on being present when Mr. Wiley Fairchild met with federal prosecutors or investigators.

In early 1985, Mr. Hess was asked by both Wiley and Drew Fairchild to represent Drew Fairchild in connection with his criminal case for conspiring to import marijuana. Mr. Hess became convinced that the state court authorities would not handle Drew Fairchild's case fairly, and called federal prosecutor Reid Weingarten to request that the federal government prosecute Drew Fairchild. Under Mississippi law, a federal prosecution for the same drug offense would preempt a state prosecution. Mr. Hess told the federal prosecutor that Drew Fairchild would plead guilty to a drug conspiracy charge and the prosecutor stated that he would make no recommendation at Drew Fairchild's sentencing, one way or the other, concerning the appropriate sentence for Drew Fairchild. Drew Fairchild was indicted in federal court on March 29, 1985 and entered a plea of guilty on the same day. In view of the arrangements for Drew Fairchild's federal case, Mr. Hess advised Mr. Fairchild to testify without any formal grant of immunity in May in United States v. Royals, No. CR 85-00002 (S.D. Miss.), even though he was awaiting sentencing in federal court and was under indictment in state court at the time. In Drew Fairchild's state court prosecution, Mr. Hess then unsuccessfully moved to have the case

dismissed because of the pending federal charges, on the grounds that the state prosecution was preempted under Mississippi law.

Mr. Hess's anticipated testimony will support the first two contentions listed in this Court's Order of June 29, 1988 as the subject of the hearing in this proceeding. It is reasonably anticipated that Mr. Hess's direct testimony will take no longer than an hour and that cross-examination would not exceed that amount of time.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Date: August __, 1988.

DECLARATION OF JOHN D. BALTAR

John D. Baltar of Hattiesburg, Mississippi hereby makes the following declaration:

1. I am administrative assistant to Mr. Wiley Fairchild of Fairchild Construction Co. in Hattiesburg, and worked in that capacity from 1984 through 1986, when Mr. Fairchild was investigated by and prosecuted by the federal government. At Mr. Fairchild's request, I attended a number of meetings with federal prosecutors and agents during that time and assisted those officials in several ways.

2. My first involvement with the federal investigation was in April 1984, when Mr. Fairchild asked me to contact George Phillips, the United States Attorney for the District of Mississippi, concerning Mr. Fairchild's belief then that he was the object of blackmail by the Forrest County District Attorney, Paul Holmes. When I spoke to Mr. Phillips, he referred me to Weldon Kennedy of the Federal Bureau of Investigation, who arranged to have FBI agents interview Mr. Fairchild the following morning. I later learned that the FBI had wanted to interview Mr. Fairchild for some time, but was unsure as to how to approach him.

3. In several conversations with Mr. Fairchild, during which I was present, federal prosecutor Reid Weingarten stated that if Mr. Fairchild could give him a "smoking gun" that would convict Judge Nixon, Mr. Fairchild would not be indicted.

4. In November 1984, I was at the Federal Building in Jackson with Mr. Fairchild while Mr. Fairchild's attorney, Barry Hess of Mobile, Alabama, met with federal prosecutor Reid Weingarten concerning a possible plea agreement on a two-count federal indictment against Mr. Fairchild that had been returned in September 1984. Mr. Hess advised Mr. Fairchild and me that Mr. Weingarten was willing to dismiss the perjury count of the indictment and accept a plea of guilty to a charge of paying an illegal gratuity to Judge Nixon. Mr. Hess reported that Mr. Weingarten promised that the government would not seek any incarceration of Mr. Fairchild. Mr. Hess also reported that Mr. Weingarten stated that he would drop the gratuity charge if it turned out that there was no connection between the prosecution of Drew Fairchild on drug charges and Judge Nixon's investment in oil and gas properties. Mr. Hess reported that Mr. Weingarten was not willing to put the last statement -- that he would drop the gratuity charges against Mr. Fairchild if he became convinced there was no connection between Drew's case and Judge Nixon's investment -- in the plea agreement letter.

5. In meetings with Mr. Fairchild and me in early 1985, Mr. Weingarten promised to do what he could to help Mr. Fairchild's son, Drew.

6. In the spring of 1985, it was reported that County Judge Dickie McKenzie, before whom Drew Fairchild's prosecution was pending, had stated that he would sentence Drew Fairchild to five years in prison on the pending drug charges. I immediately

brought Drew Fairchild to Mr. Hess's office, and Mr. Hess contacted Reid Weingarten by telephone to try to make a better deal for Drew. It is my understanding that during that conversation Mr. Weingarten agreed to prosecute Drew Fairchild in a federal proceeding on the drug charges to head off the state prosecution. I also understood that Mr. Weingarten agreed to intercede with the then-District Attorney in Forrest County, Glenn White, to seek an agreement that the state authorities would accept the time served on federal charges as full satisfaction of any state charges against Drew Fairchild.

7. I understood that Mr. Weingarten did reach an agreement with state authorities to have any federal prison time satisfy the state authorities, and that he wrote a letter to the state authorities to assist Drew Fairchild in the state prosecution.

8. In the course of my conversations with Mr. Weingarten, I mentioned that, on behalf of Mr. Fairchild, I and several others had organized a telephone survey of 720 residents of the 11 counties from which jurors are drawn for juries in federal trials in Mattiesburg. The survey was designed to identify the personal characteristics of those individuals who would be most inclined to support either the government or Mr. Fairchild, had Mr. Fairchild's case had gone to trial.

9. At Mr. Fairchild's request, I made the results and methodology of that survey available to Mr. Weingarten before the

trial of Judge Nixon, and Mr. Weingarten reviewed those materials.

10. Immediately before Judge Nixon's trial, and with Mr. Fairchild's approval, I assisted Mr. Weingarten in researching the backgrounds of some potential jurors for that trial. To help with this effort, I went down to the Federal Building in Mattiesburg and reviewed the list of potential jurors, providing to Mr. Weingarten any information I knew about the potential jurors and the areas where they lived. I also made several telephone calls to friends and acquaintances to seek further background information on the potential jurors, and conveyed that information to Mr. Weingarten.

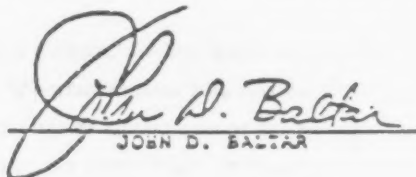
11. On a Saturday or Sunday morning during the trial, I picked up Mr. Weingarten at the Howard Johnson's Motel in Mattiesburg and drove him to the offices of Fairchild Construction Company. At a meeting with Mr. Fairchild, Mr. Weingarten then reviewed with Mr. Fairchild the presentation to be made by Mr. Fairchild as a government witness during the trial. During this meeting, Mr. Weingarten reviewed the points he wanted to emphasize in Mr. Fairchild's testimony, and told Mr. Fairchild that he did not want to get into other matters. Based on Mr. Weingarten's notes, I wrote down during that meeting a list of questions and answers that would be covered during Mr. Fairchild's testimony and those were reviewed by all three of us -- Mr. Weingarten, Mr. Fairchild and myself. I then had that list of questions and answers typed up so Mr. Fairchild could

study them before his appearance as a witness. Mr. Weingarten requested that Mr. Fairchild study the information in Attachment 1, 2 before appearing as a witness. I observed Mr. Fairchild studying those materials, including while he waited in the jury room at the federal courthouse on the day he testified in Judge Nixon's trial. That material is attached to this Declaration as Attachment 2.

12. After Judge Nixon's trial was concluded, Mr. Fairchild asked me to contact Mr. Weingarten to ask if Mr. Weingarten would assist in an application by Mr. Fairchild for a presidential pardon. I reached Mr. Weingarten by telephone at his office in Washington and made that request. Mr. Weingarten replied that he would be willing to help Mr. Fairchild in any way he could, but would not do so until the Judge Nixon matter was completely concluded.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 3/4/88


JOHN D. BALTAAR

RELATIONSHIP WITH DREW

RELATION WITH CARROLL

RELATIONSHIP WITH BUD

DREW'S CASE:

THE BUST

READ IN PAPER, NOT HAPPY THAT DOPE WAS BEING BOUGHT INTO MATTIESBURG. LATER FOUND OUT THAT DREW HAD BEEN INVOLVED AND WAS VERY DISGUSTED WITH HIM. PREVIOUSLY HAD NOT COTTEN ALONG WITH DREW BUT HE IS MY SON AND I DID NOT WANT HIM TO GO TO PRISON. DREW TOLD ME THAT HE AND BILL PORTER WAS GOING TO SEE GEORGE PHILLIPS. DREW LATER SHOWED ME THE PAPERS OF HIS FLEA BARGIN. \$7,500.00 GIVEN TO BILL PORTER.

I GOT A TELEPHONE CALL FROM BUD ABOUT 3:00 ONE NIGHT, THAT DREW HAD BEEN INDICTED AND TO GET DREW TO GET BILL PORTER, CARROLL INGRAM OR WHO AND HE WOULD RELEASE DREW ON HIS OWN RECOGNIZANCE. \$7,500.00 GIVEN TO BILL PORTER AND HE SAID THAT WOULD TAKE CARE OF EVERYTHING.

*Where was
this stored?*

BOB ROYALS CAME AND ASKED ME TO GET OFF MY MONEY. MADE ME REAL MAD. I WAS ANGERED OVER AN ACCUMULATION OF DELAYS AND PEOPLE TRYING TO BLACKMAIL ME. I TRIED TO CALL CARROLL TO GET THE JUDGE UP HERE AND WAS UNABLE TO GET CARROLL. I CALLED THE JUDGE DIRECT AND TOLD HIM I WANTED TO DISCUSS SOMETHING WITH HIM BUT NOT OVER THE PHONE.

WHY DID I CALL NIXON?

BECAUSE I THOUGHT HE OWED ME A FAVOR. WHEN THE JUDGE HAD COME BY TO THANK ME FOR PUTTING HIM IN THE OIL DEAL. THE JUDGE SAID "NILEY, IF I CAN EVER HELP YOU, I WILL. IF I CAN'T, I WILL TELL YOU." I CALLED HIM AND ASKED HIM TO COME BY AND HE DID.

HOW LONG WERE THE OIL PAPERS BACKDATED?
1 YEAR EXACTLY

WERE YOU PROSECUTED BY THE JUSTICE DEPARTMENT?
YES

WHY?

I MADE A MISTAKE. I TREATED NIXON AS I HAD OTHERS BEFORE. I DID NOT WANT TO DO WRONG. I DID NOT KNOW IT WAS A CRIMINAL OFFENSE TO HELP A JUDGE.

HAVE YOU MADE A DEAL TO TESTIFY IN THIS CASE?

NO

WHEN DID NIXON COME UP AFTER THE PHONE CALL TO HIM FROM YOU?
HE CAME UP WITHIN A FEW DAYS.

DID YOU EVER HEAR FROM NIXON AFTER HIS VISIT?

YES. THAT NIGHT NIXON CALLED AND SAID "WILEY, YOU REMEMBER THAT MAN WE WERE TALKING ABOUT THIS AFTERNOON. WELL, I AM AT HIS HOUSE AND HE SAYS EVERYTHING WILL BE ALL RIGHT." THEN BUD GOT ON THE PHONE AND SAID "WILEY, WHEN THIS MAN ASK ME TO DO SOMETHING I DO IT." I THANKED HIM FOR CALLING AND SAID I WOULD SLEEP A LOT BETTER THAT NIGHT.

DID YOU TELL ANYBODY ABOUT THAT CALL?

YES. I TOLD CARROLL INGRAM.

WHAT HAPPENED NEXT?

DREW'S CASE WAS PASSED TO THE FILES. CARROLL BOUGHT ME THE PAPERS OUT AND SAID "THE CHRISTMAS". I WAS SO EXCITED THAT AT LAST IT WAS ALL OVER. I CALLED DREW'S WIFE AND SHE CAME OUT AND I GAVE HER A COPY.

HOW DID THE CASE GET BACK ON THE DOCKET?

WHEN JUDGE MCKENZIE CAME IN AND TOOK JACK WELDY'S PLACE.

DID YOU EVER SEE JUDGE MCKENZIE?

YES, I CAME IN ONE MORNING AND THEY TOLD ME THAT BUD HOLMES HAD CALLED.

THEY TOLD HIM THAT I SHOULD BE IN SHORTLY. I TOLD THEM IF HE CALLED BACK THAT

I WAS NOT HERE BUT THEY SAID HE WAS COMING OUT, SO I TOLD THEM TO GO AHEAD AND

CALL ME WHEN HE GOT HERE AND IN A FEW MINUTES BUD AND JUDGE MCKENZIE CAME, SO

I GOT ROONEY TO COME IN THE OFFICE WITH US. BUD SAID "WILEY, NOBODY IS AFTER

DREW. NOTHING IS GOING TO HAPPEN TO HIM. GET AHEAD OF DREW AND TELL HIM TO

JUST LET IT SLIDE. DO NOT LET THE PRESS GET AHEAD OF THIS CAUSE THEY WILL JUST

SCREW THINGS UP." BUD SAID JUST LET IT SLIDE. "JUDGE MCKENZIE COULD GIVE DREW

30 YEARS BUT ME AND THE JUDGE GET ALONG REAL WELL. NOTHING IS GOING TO HAPPEN

TO DREW."

WHAT DID JUDGE McKENZIE SAY?
HE DID NOT SAY ANYTHING, HE JUST SAT THERE AND NODDED, LIKE HE AGREED.

CROSS EXAMINATION:

WHY DID YOU CARE WHAT WOULD HAPPEN TO DEWY?
BECAUSE I'M PROUD OF THE FAIRCHILD NAME, AND HE'S MY SON.

DID YOU TALK WITH MR. WEINGARTEN ABOUT TESTIFYING?
YES

WHAT DID HE TELL YOU TO SAY?
HE TOLD ME TO JUST TELL THE TRUTH, AND THAT'S WHAT I'M DOING.

WHY WERE YOU INDICTED?
BECAUSE MY LAWYER ADVISED ME NOT TO HELP THE FEDS INVESTIGATION AND EARL
KEFFER TOLD ME THEY COULD NOT USE MY TESTIMONY AGAINST ME.

STATE OF MISSISSIPPI
COUNTY OF HARRISON

AFFIDAVIT OF JOHN D. BALTAR

PERSONALLY appeared before me, the undersigned authority in and for said County and State, the within named JOHN D. BALTAR, who after being first duly sworn by me, states on his oath as follows:

1. My name is John D. Baltar and I presently reside at 400 Graymont Avenue, Jackson, Mississippi 39205.

2. In November of 1983, I became employed by W. R. Fairchild Construction Company, Ltd., of Hattiesburg, Mississippi as the Administrative Assistant to Wiley Fairchild. I remained in that position until May of this year when I left to pursue my own independent consulting interest.

3. In the early evening of Friday, April 6, 1984, Mr. Fairchild called me at home. He sounded upset and was, as usual for that time of day, inebriated. Mr. Fairchild stated that he thought he was being blackmailed by Bud Holmes over his son's drug case which was then pending in the Circuit Court of Forrest County, Mississippi. He instructed me to call George Phillips, the U.S. Attorney for the Southern District of Mississippi, and explain to him about the alleged "blackmail".

4. On Monday, April 9, 1984, I called George Phillips and asked him if he knew anything about Mr. Fairchild's son's drug case. Mr. Phillips replied he knew more about it then he wanted to know. I relayed Mr. Fairchild's complaint to Mr. Phillips and he responded he would have one of his men contact me concerning the complaint. Later that day I received a phone message from Mr. Weldon Kennedy of the FBI and I returned his call. Mr. Kennedy advised me Mr. Phillips had contacted him concerning Mr. Fairchild's

complaint and asked whether Mr. Fairchild would agree to be interviewed by the FBI the following day, April 10, 1984. I called Mr. Fairchild who stated he would agree to meet with FBI agents the following day at his office in Hattiesburg, Mississippi. Mr. Fairchild left for a vacation on April 12, 1984 and I did not have an opportunity to discuss this with him until his return several days later. At that time, Mr. Fairchild told me the FBI was interested in the oil and gas investments which Judge Walter Nixon had made with him. Mr. Fairchild stated that there was nothing to it.

5. Mr. Fairchild was subpoenaed to testify before a Special Grand Jury on July 18, 1984. I attended these proceedings with him, however, I remained outside the Grand Jury while he testified that afternoon and the following morning.

6. In early September of 1984, Mr. Fairchild was indicted by that Grand Jury on one count of giving an illegal gratuity and another for allegedly lying to the Grand Jury during his testimony. Mr. Fairchild wanted an attorney who had connections with the Federal Court and Mr. Charles B. Arendall, Jr., of Mobile, Alabama was retained because he was a former law partner to a Federal Judge in Alabama. Mr. Arendall advised Mr. Fairchild that it did not matter what his intentions were at the time he allowed Judge Nixon to invest with him, he was "guilty as hell". He told Mr. Fairchild he would probably be convicted of giving an illegal gratuity to a Federal Judge.

Since Mr. Arendall was not a criminal attorney, he advised Mr. Fairchild to hire Attorney Barry Hess of Mobile, Alabama. Mr. Hess was retained by Mr. Fairchild. At some point in time, Mr. Hess advised Mr. Fairchild that a new Federal act which would be in effect at the time of his trial would require that he begin serving his prison sentence upon conviction and would not be

entitled to bail pending appeal. Mr. Hess advised him that he would probably have served his prison sentence by the time the appeal was decided.

7. In October of 1984, we had several meetings with government representatives, including Reid Weingarten, to discuss plea negotiations. Mr. Weingarten told us that Mr. Fairchild would have to provide him with a "smoking gun" against Judge Nixon in order to reach a plea bargain. During this time, Mr. Fairchild tried to think of things that were incriminating against Judge Nixon. For example, the Preacher Shows alleged pay-off scheme and the alleged murder of Bill Porter by Bud Holmes to collect on a credit life insurance policy were two attempts by Mr. Fairchild to provide Mr. Weingarten with "a smoking gun". Some of the rumors and stories Mr. Fairchild came up with during this period of time were so incredible that we had to convince him not to relate them to Mr. Weingarten.

8. Sometime in late October of 1984 we met in Jackson, Mississippi at the Ramada Inn Coliseum with Mike Martinson and Dick Morris who had conducted a poll Mr. Fairchild had commissioned to determine how potential jurors would vote in his trial. At this meeting, the pollsters advised that the potential jurors were split 50% guilty and 50% not guilty before being advised of Robert Jarvis' involvement in the case. Upon being advised of Robert Jarvis' participation, the results were 80% not guilty and 20% guilty. Mr. Fairchild wanted a guarantee that he would be found "not guilty", which the pollsters refused to give him.

9. During the ride home from Jackson, Mr. Wallace Gurn, Mr. Fairchild and I were discussing the poll results. Mr. Fairchild was concerned that the pollsters could not guarantee his acquittal and stated that, "I want to know where I will be spending Christmas". At this time, Mr. Fairchild for the

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first time told us of the phone call from Bud Holmes' farm involving Judge Nixon and his meeting with Judge Nixon prior to the phone call. Mr. Fairchild said that Bud Holmes had called him and said I got a man here that wants to talk to you. After that, Judge Nixon got on the phone and said, "You know that matter we were talking about this afternoon? I am out here with that fellow and everything is going to be alright". Mr. Fairchild related Judge Nixon then stated Bud wanted to talk to him again and Bud Holmes got back on the phone and stated, "When this man asks me to do something, I do it". Mr. Fairchild then told us that this phone call followed a meeting he had with Judge Nixon at his office which he had requested. In that meeting, he told Judge Nixon he thought Bud Holmes and Carroll Ingram were trying to blackmail him by dragging his good name through the mud. When questioned further by us during the ride home, Mr. Fairchild could not remember when this meeting and phone call took place, however, he related it in time to a visit he had from Bob Royals. Mr. Royals went to Mr. Fairchild's office and stated he had been to visit Joe Crone with Bill Porter at Maxwell Air Force Base. Bill Porter had stated to Royals that Drew would not have his tail in a crack if he would get up off his money to which Royals replied, "Drew hasn't got any money". Bill Porter stated "but his old man does". Mr. Fairchild stated, "Bob, I got your message, the answer is not no, it is hell no."

10. After this conversation with Mr. Fairchild either I or one of Mr. Fairchild's attorneys called Mr. Weingarten to tell him what we had in reference to this new information. I requested that the government determine when Bob Royals visited Joe Crone with Bill Porter at Maxwell Air Force Base since this visit coincided in Mr. Fairchild's mind with the approximate date that he discussed the blackmail allegation with Judge Nixon and the phone call

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was made. We were later informed by Weingarten or an FBI agent that the date of Royal and Porter's visit to Crone did not coincide with the other facts.

11. On November 1, 1984, Wallace Orn, Wiley Fairchild and I went to Jackson, Mississippi to meet with Weingarten at the FBI office. We arrived shortly after 1:00 p.m. and Mr. Weingarten arrived sometime later. Mr. Fairchild related to Mr. Weingarten the same information he had given us in the car several days earlier. At this point, Mr. Weingarten stated to Mr. Fairchild and to us that this was "not a smoking gun". Mr. Weingarten stated in order for Mr. Fairchild to get a plea bargain, he would have to first admit the oil and gas investment with Judge Nixon was an illegal gratuity. He further stated that the evidence showed that Mr. Fairchild had entered into the oil and gas investment after Drew Fairchild's drug bust in August of 1980 and he would have to change his testimony and state that that's how it occurred.

Mr. Weingarten told Mr. Fairchild that the phone call was made before Drew Fairchild's case was passed to the files by Bud Holmes. Mr. Weingarten stated that Mr. Fairchild would have to testify that Judge Nixon had placed the phone call and that this occurred prior to the case being passed to the files in December of 1982. It was clear that if Mr. Fairchild could provide that testimony then a "plea bargain" would be possible.

After two (2) or three (3) hours of discussions and after we felt comfortable Mr. Fairchild could say the things Mr. Weingarten wanted him to say, it was agreed that we would tape Mr. Fairchild's proffer in another room. This was done after which Mr. Weingarten stated that he would let us know whether Mr. Fairchild's testimony was good enough for a "plea bargain".

Either at this meeting or in a subsequent meeting and before Mr. Fairchild's second appearance before the Grand Jury on November 28, 1984, Mr.

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over

Fairchild also wanted an agreement from Mr. Weingarten that he would help his son, Drew, to which Mr. Weingarten responded he would do what he could to help Drew.

12. Some time after our meeting with Mr. Weingarten on November 1, 1984, Mr. Hess advised us that Mr. Weingarten had agreed to a plea bargain as I have related in my previous declaration. During that month, I had several conversations with Mr. Weingarten during which Mr. Weingarten stressed to me how important it was to keep Mr. Fairchild on track with his testimony and that he testify to important points which Mr. Weingarten had said he needed before he would agree to the plea bargain. One such occasion was at the time Mr. Fairchild entered his plea of guilty in New Orleans, Louisiana on November 26, 1984. Mr. Fairchild was to reappear before the same Grand Jury and testify as Mr. Weingarten wanted. Mr. Weingarten talked to me privately and emphasized that Mr. Fairchild should be rehearsed by me so that he would testify before the Grand Jury to the following: that Carroll Ingram first approached Mr. Fairchild about the oil and gas investment with Judge Nixon after his son Drew's drug bust in August of 1980; that the oil and gas interests which he sold Judge Nixon were worth way more than what Judge Nixon paid for them; that the meeting with Judge Nixon and Mr. Fairchild concerning the alleged blackmail by Bud Holmes took place before Drew's State drug case was passed to the files; and that the phone call from the farm that evening was placed by Judge Nixon.

I told Mr. Weingarten that I would rehearse this with Mr. Fairchild and he would be prepared for his testimony on November 28, 1984.

13. I prepared a written summary of what Mr. Fairchild would be asked by Mr. Weingarten and the answers that Mr. Weingarten wanted from Mr. Fairchild. Mr. Fairchild spent a great deal of time reviewing and rehearsing this



testimony prior to his appearance before the Grand Jury. I accompanied Mr. Fairchild to the Courthouse on November 28, 1984 for his Grand Jury appearance. After Mr. Fairchild testified, Mr. Weingarten seemed pleased with the results.

14. In the following year, FBI agents would visit Mr. Fairchild's office seeking information and copies of documents. In the Spring of 1985, Mr. Weingarten assisted Drew Fairchild as he had promised Mr. Fairchild and as I have previously related in my first declaration.

15. Sometime during 1985, Mr. Fairchild wanted to go ahead with the sentencing on his guilty plea in Federal Court. He stated he knew Mr. Weingarten did not want to sentence him until after Judge Nixon's trial so he could hold something over his head.

Mr. Fairchild instructed me to call Mr. Weingarten and tell him he would testify the way Mr. Weingarten wanted him to at Judge Nixon's trial if he got sentenced before the trial. Mr. Weingarten was hesitant, however, after Judge Nixon got indicted Mr. Weingarten agreed that the sentencing could take place. In September of 1985, we attended the sentencing hearing in New Orleans, Louisiana. Before we went into the Courtroom for the sentencing, Mr. Fairchild said to Mr. Weingarten: "Just like I told John, you don't have to worry about me, I am going to say whatever you want me to say at Judge Nixon's trial."

At the sentencing hearing, Mr. Weingarten recommended, as he had promised, that Mr. Fairchild not serve any time; however, the Court sentenced Mr. Fairchild to serve sixty (60) days in a halfway house in Jackson, Mississippi.

16. After Mr. Fairchild had served his sentence, he instructed me to call Mr. Weingarten to inquire about a pardon. I called Mr. Weingarten and he stated he would help Mr. Fairchild, but that there were certain procedures for

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obtaining a pardon and explained some of those procedures. He further explained that those who made the decisions on Mr. Fairchild's pardon would come to him as prosecuting attorney for his opinion. He implied that he would have some control over whether Mr. Fairchild received a pardon. He stated that he would not help with the pardon until after Judge Nixon's trial. I related Mr. Weingarten's statements to Mr. Fairchild.

17. Several days before Judge Nixon's trial was scheduled, Mr. Weingarten called me to pick him up at the Howard Johnson's so that Mr. Fairchild, he and I could meet to prepare Mr. Fairchild for his trial testimony. It was during this meeting between the three (3) of us that Mr. Weingarten reviewed the points he wanted Mr. Fairchild to cover in his testimony which included those that he had previously had me rehearse with Mr. Fairchild prior to his Grand Jury testimony. As we covered the questions Mr. Weingarten was going to ask Mr. Fairchild on the stand, Mr. Weingarten would write the specific questions on his pad, we would then discuss the answer with Mr. Fairchild and as soon as Mr. Weingarten was comfortable that Mr. Fairchild could answer the question as Mr. Weingarten wanted, then he would write down that answer on his note pad. As we covered these questions and answers, if Mr. Weingarten did not feel comfortable that Mr. Fairchild could remember the answer or, if it seemed to confuse him, he would state that he was not going to ask that question. When Mr. Weingarten finished writing down the questions and answers, Mr. Fairchild instructed me to get the questions and answers from Mr. Weingarten's notes just like he had them to be typed for him to study before he gave his testimony. Mr. Weingarten agreed that this was a good idea and let me borrow his list of questions and answers and I copied them verbatim from his note pad and had Mr. Fairchild's secretary type them up for him to study.

8/24

A copy of these questions and answers are attached to my original declaration as Attachment 2.

During this meeting, Mr. Weingarten stated that he was relying primarily on Mr. Fairchild's testimony and that he could not rely on Mr. Jarvis because Mr. Jarvis had proven to be not credible in the past. It was very important to Mr. Weingarten that Mr. Fairchild testify that the meeting with Judge Nixon and the phone call from Bud Holmes' farm took place before Drew's case was passed to the files. Mr. Weingarten told Mr. Fairchild that when asked how he could remember that the phone call and meeting with Judge Nixon was before Drew's case was passed to the files, he was to state he remembered it because he was mad at Bud because the case had not been passed to the files as promised. Mr. Weingarten also stated that he was concerned that the defense lawyer would use the recorded conversation Mr. Fairchild had with Robert Jarvis in April of 1984 against him. He told Mr. Fairchild when asked about the Jarvis tape recorded conversation, he was to say that he was not being honest with Jarvis at that time and was telling Jarvis just what he wanted him to hear.

17. During the trial and up to the time Mr. Fairchild went on the witness stand, Mr. Fairchild studied the type written questions and answers and he and I rehearsed those questions and answers in a room at the Federal Courthouse. Several times prior to Mr. Fairchild's testimony, Mr. Weingarten checked with us and would inquire as to whether Mr. Fairchild was ready to give the prepared testimony. During these visits the typewritten questions and answers were either in Mr. Fairchild's hands or on the table or chair and in plain view of Mr. Weingarten. Mr. Weingarten appeared very nervous and concerned that Mr. Fairchild would not be able to keep his answers straight on the key points.

18. After Judge Nixon's conviction and at Mr. Fairchild's instructions, I called Mr. Weingarten to inquire about Mr. Fairchild's pardon. Mr. Weingarten replied that he would help Mr. Fairchild but he could not do so until after the Judge Nixon matter was completely concluded.

THIS THE 3rd day of August, 1988

John O. Baltar
JOHN O. BALUAR

S.WORN TO AND SUBSCRIBED BEFORE ME on this the 3rd day of August, 1988.

Janet LaHeur
ROTARY PUBLIC

My Commission Expires:

2-28-90

DECLARATION OF WILEY FAIRCHILD

Wiley Fairchild of Hattiesburg, Mississippi hereby makes the following declaration:

1. I attended negotiations with federal prosecutor Reid Weingarten in November 1984 concerning a plea agreement with respect to a federal indictment against me for one count of perjury and one count of giving an illegal gratuity. The plea agreement called for the government to dismiss the perjury charge and for me to plead guilty to the gratuity charge. Under the final agreement, as I understood it, Mr. Weingarten said that the gratuity charge would be dropped if he later became convinced that there was no connection between my oil investment with Judge Walter Nixon and the handling of the drug charges against my son, Drew.

2. Mr. Weingarten also stated on several occasions in early 1985 that he would do what he could to help my son, Drew.

3. Although I did not believe I had committed a crime -- and even though Judge Nixon's investment had nothing to do with Drew's case -- I pleaded guilty because I was afraid of going to jail and because my lawyer told me that if I was convicted they would put me in handcuffs and then take me straight to jail that instant.

4. Before my sentencing hearing in New Orleans in September 1985, my attorney, Wallace Orr, related to me what Mr. Weingarten had advised that I should say at the hearing. Mr. Weingarten stated that I should tell the court that I had made a mistake and was sorry. I was afraid not to say in Court what Mr. Weingarten said I should say.

5. I met with Mr. Weingarten on several occasions between September 1984 and my testimony at Judge Nixon's trial in January 1986. At those meetings we discussed my testimony against Judge Nixon. Mr. Weingarten told me on several occasions that he needed a "smoking gun" to use against Judge Nixon.

6. Based on Mr. Weingarten's statements at the time of my plea agreement and based on our course of dealing in 1984 and 1985, I was led by Mr. Weingarten to believe that if my testimony at Judge Nixon's trial satisfied him, Mr. Weingarten would do everything he could to help me, including assisting in getting a pardon. I also had the distinct impression that if my testimony at the Nixon trial did not please Mr. Weingarten he would not help me.

I declare under the penalty of perjury that the foregoing is true and correct.

DATE: 4 March 1988
845 K77

Walter L. Smith
WITNEY SIGNED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

D

WALTER L. NIXON, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. H88-0052(G)

PETITIONER'S LIST OF EXHIBITS

Pursuant to the Court's Order of June 29, 1988, petitioner provides the following list exhibits that he expects to submit at trial:

1. An undated, three-page document, previously attached to the Declaration of John Baltar that was submitted with the Petition in this proceeding, which has been identified as the "script" that was prepared with the assistance of the federal prosecutor for the testimony of Wiley Fairchild at Judge Nixon's trial. This exhibit will establish the overreaching of the prosecutors and the oppression of Wiley Fairchild as a key government witness in this matter, and therefore will support all three contentions listed in the Court's Order of June 29, 1988.

2. Letter of Nov. 20, 1984 from Reid Weingarten to Barry Hess, concerning the disclosed terms of the plea arrangement between the federal government. This exhibit will establish the written plea agreement between the government and

Mr. Fairchild, and thus also will establish how much of the ultimate understanding between the government and Mr. Fairchild was not recorded or disclosed to petitioner before his trial. This exhibit is directly relevant to the first two contentions listed in the Court's Order of June 29, 1988.

3. Plea Agreement dated November 26, 1984 in United States v. Wiley Fairchild, Cr. No. 84-0009 (S.D. Miss.). See previous paragraph.

4. Letter from Reid Weingarten to Glenn White dated March 5, 1985, concerning the cooperation of Drew Fairchild with the federal government. This exhibit will establish some of the efforts undertaken by the federal government to assist Drew Fairchild. This exhibit is relevant to the first two contentions listed in the Court's Order of June 29, 1988.

5. Memorandum to Gerald McDowell from Reid Weingarten and Jan Neilsen Little, dated March 22, 1985, concerning federal prosecution of Drew Fairchild. This exhibit will establish: (i) the true motivations behind the federal prosecution of Drew Fairchild; (ii) some of the relationship between that prosecution and the testimony of Wiley Fairchild in Judge Nixon's trial; and (iii) the government's intention to conceal the true purposes for indicting Drew Fairchild. This exhibit is relevant to the first two contentions listed in the Court's Order of June 29, 1988.

6. Defendant's Motion for Production of Exculpatory Evidence And For Disclosure Of Impeaching Evidence and Memorandum In Support of Motion for Production of Exculpatory Evidence And

For Disclosure Of Impeaching Evidence dated November 7, 1985, and Order dated December 24, 1985, in United States v. Nixon, CR. No. 885-00012(L) (S.D. Miss.). This exhibit will establish the discovery obligations imposed upon the government by the Court prior to the trial in this case. This exhibit is relevant to the first contention listed in the Court's Order of June 29, 1988.

7. Letter from Reid Weingarten to Michael Fawer, dated January 7, 1986, concerning the prosecution of Drew Fairchild. This exhibit will establish what the government stated to petitioner's counsel as the supposed reasons for the federal prosecution of Drew Fairchild. This exhibit is relevant to the first two contentions listed in the Court's Order of June 29, 1988.

8. The following pleadings and orders entered in State of Mississippi v. Redditt Andrew Fairchild, Cause No. 10,041 (Cir. Ct. Forrest County):

- (a) Indictment (July Term, 1981)
- (b) Warrant for Arrest (Aug. 26, 1981)
- (c) Motion and Order re Withdrawal of Guilty Plea (March 8, 1985)
- (d) Plea Bar -- Plea of Autrefois Convict or Motion to Dismiss (Apr. 9, 1985)
- (e) Motion To Quash The Indictment, Or, In The Alternative, To Dismiss The Prosecution Of The Indictment For Violation Of A Plea Bargain Agreement (May 27, 1985)

- (f) Order Overruling Amended Motion To Quash The Indictment, Or, In The Alternative, To Dismiss The Prosecution Of The Indictment For Violation Of A Plea Bargain Agreement (June 21, 1985)
- (g) Order Overruling Plea Bar -- Plea Autrefois Convict Or Motion To Dismiss (July 1, 1985).

These items will detail the course of the Drew Fairchild prosecution in state court. This exhibit is relevant to the first two contentions listed in the Court's Order of June 29, 1988.

9. The indictment (March 29, 1985) and transcript of sentencing (July 11, 1985) in United States v. Redditt "Drew" Fairchild, Cr. No. H85-00005 (S.D. Miss). These items will detail the course of the Drew Fairchild prosecution in federal court and are relevant to the first two contentions listed in the Court's Order of June 29, 1988.

10. Record of deliberations and jury notes from United States v. Nixon, CR. No. H85-00012(L) (S.D. Miss.). This exhibit will establish that the jury in this case deliberated for eighteen hours, reported deadlock at one point, and repeatedly sought guidance from the court. This exhibit is relevant to all three contentions listed in the Court's Order of June 29, 1988, because it reflects the closeness of the evidence during the trial in this case.

11. Transcripts of a personal conversation between Wiley Fairchild and Robert "Skip" Jarvis and a telephone

conversation between those two men in April 1984. This exhibit will relate to evidentiary and testimonial matters which the federal prosecutors and investigators reviewed with Wiley Fairchild in connection with the Nixon investigation, and therefore is relevant to all three contentions listed in the Court's Order of June 29, 1988.

12. Transcript of November 1, 1984 interview with Wiley Fairchild by Reid Weingarten. See Paragraph 11, supra.

13. Declaration of John D. Baltar -- This exhibit establishes the facts set forth in it, and supports all three contentions set for hearing on August 29, 1988.

14. Affidavit of John D. Baltar -- See Paragraph 13 above.

15. Declaration of Wiley Fairchild -- See Paragraph 13 above.

Respectfully submitted,

David C. Stewart

BOYCE HOLLEMAN
MICHAEL B. HOLLEMAN
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A Professional Association
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(601) 863-3142

WILLIAM H. JEFFRESS, JR.
DAVID OVERLOCK STEWART
JAY L. ALEXANDER
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.
Suite 500
Washington, D.C. 20037
(202) 293-6400

ATTORNEYS FOR PETITIONER

Date: August __, 1988

RELATIONSHIP WITH DREW

RELATION WITH CARROLL

RELATIONSHIP WITH BUD

DREW'S CASE:

THE BUST

READ IN PAPER, NOT HAPPY THAT DOPE WAS BEING BOUGHT INTO MATTIESBURG. LATER FOUND OUT THAT DREW HAD BEEN INVOLVED AND WAS VERY DISGUSTED WITH HIM. PREVIOUSLY HAD NOT GOTTEN ALONG WITH DREW BUT HE IS MY SON AND I DID NOT WANT HIM TO GO TO PRISON. DREW TOLD ME THAT HE AND BILL PORTER WAS GOING TO SEE GEORGE PHILLIPS. DREW LATER SHOWED ME THE PAPERS OF HIS PLEA BARGAIN. \$2,500.00 GIVEN TO BILL PORTER.

I GOT A TELEPHONE CALL FROM BUD ABOUT 5:00 ONE NIGHT, THAT DREW HAD BEEN INDICTED AND TO GET DREW TO GET BILL PORTER, CARROLL INGRAM OR WHO AND HE WOULD RELEASE DREW ON HIS OWN RECOGNIZANCE. \$7,500.00 GIVEN TO BILL PORTER AND HE SAID THAT WOULD TAKE CARE OF EVERYTHING.

BOB ROYALS CAME AND ASKED ME TO GET OFF MY MONEY. MADE ME REAL MAD. I WAS ANGERED OVER AN ACCUMULATION OF DELAYS AND PEOPLE TRYING TO BLACKMAIL ME. I TRIED TO CALL CARROLL TO GET THE JUDGE UP HERE AND WAS UNABLE TO GET CARROLL. I CALLED THE JUDGE DIRECT AND TOLD HIM I WANTED TO DISCUSS SOMETHING WITH HIM BUT NOT OVER THE PHONE.

WHY DID I CALL NIXON?

BECAUSE I THOUGHT HE OWED ME A FAVOR. WHEN THE JUDGE HAD COME BY TO THANK ME FOR PUTTING HIM IN THE OIL DEAL. THE JUDGE SAID "WILEY, IF I CAN EVER HELP YOU, I WILL. IF I CAN'T, I WILL TELL YOU." I CALLED HIM AND ASKED HIM TO COME BY AND HE DID.

HOW LONG WERE THE OIL PAPERS BACKDATED?
1 YEAR EXACTLY

WERE YOU PROSECUTED BY THE JUSTICE DEPARTMENT?
YES

WHY?

I MADE A MISTAKE. I TREATED NIXON AS I HAD OTHERS BEFORE. I DID NOT WANT TO DO WRONG. I DID NOT KNOW IT WAS A CRIMINAL OFFENSE TO HELP A JUDGE.

HAVE YOU MADE A DEAL TO TESTIFY IN THIS CASE?

NO

WHEN DID NIXON COME UP AFTER THE PHONE CALL TO HIM FROM YOU?
HE CAME UP WITHIN A FEW DAYS.

DID YOU EVER HEAR FROM NIXON AFTER HIS VISIT?

YES. THAT NIGHT NIXON CALLED AND SAID "WILEY, YOU REMEMBER THAT MAN WE WERE TALKING ABOUT THIS AFTERNOON. WELL, I AM AT HIS HOUSE AND HE SAYS EVERYTHING WILL BE ALL RIGHT." THEN BUD GOT ON THE PHONE AND SAID "WILEY, WHEN THIS MAN ASK ME TO DO SOMETHING I DO IT." I THANKED HIM FOR CALLING AND SAID I WOULD SLEEP A LOT BETTER THAT NIGHT.

DID YOU TELL ANYBODY ABOUT THAT CALL?

YES. I TOLD CARROLL INGRAM.

WHAT HAPPENED NEXT?

DREW'S CASE WAS PASSED TO THE FILES. CARROLL BOUGHT ME THE PAPERS OUT AND SAID "MERCHRISTMAS". I WAS SO EXCITED THAT AT LAST IT WAS ALL OVER. I CALLED DREW'S WIFE AND SHE CAME OUT AND I GAVE HER A COPY.

HOW DID THE CASE GET BACK ON THE DOCKET?

WHEN JUDGE MCKENZIE CAME IN AND TOOK JACK WELDY'S PLACE.

DID YOU EVER SEE JUDGE MCKENZIE?

YES, I CAME IN ONE MORNING AND THEY TOLD ME THAT BUD HOLMES HAD CALLED.

THEY TOLD HIM THAT I SHOULD BE IN SHORTLY. I TOLD THEM IF HE CALLED BACK THAT I WAS NOT HERE BUT THEY SAID HE WAS COMING OUT, SO I TOLD THEM TO GO AHEAD AND CALL ME WHEN HE GOT HERE AND IN A FEW MINUTES BUD AND JUDGE MCKENZIE CAME, SO I GOT RODNEY TO COME IN THE OFFICE WITH US. BUD SAID "WILEY, NOBODY IS AFTER DREW. NOTHING IS GOING TO HAPPEN TO HIM. GET AHEAD OF DREW AND TELL HIM TO JUST LET IT SLIDE. DO NOT LET THE PRESS GET AHEAD OF THIS CAUSE THEY WILL JUST SCREW THINGS UP." BUD SAID JUST LET IT SLIDE. "JUDGE MCKENZIE COULD GIVE DREW 20 YEARS BUT ME AND THE JUDGE GET ALONG REAL WELL. NOTHING IS GOING TO HAPPEN TO DREW."

WHAT DID JUDGE MCKENZIE SAY?
HE DID NOT SAY ANYTHING, HE JUST SAT THERE AND NODDED, LIKE HE AGREED.

CROSS EXAMINATION:

WHY DID YOU CARE WHAT WOULD HAPPEN TO DREW?
BECAUSE I'M PROUD OF THE FAIRCHILD NAME, AND HE'S MY SON.

DID YOU TALK WITH MR. WEINGARTEN ABOUT TESTIFYING?
YES

WHAT DID HE TELL YOU TO SAY?
HE TOLD ME TO JUST TELL THE TRUTH, AND THAT'S WHAT I'M DOING.

WHY WERE YOU INDICTED?
BECAUSE MY LAWYER ADVISED ME NOT TO HELP THE FEDS INVESTIGATION AND KARL
KEPPER TOLD ME THEY COULD NOT USE MY TESTIMONY AGAINST ME.

RTW:JNL:ab
186-41-249

Memorandum DC 20330

NOV 20 1984



BARRY Sess, Esq.
Sess, Atchison & Porne
101 St. Joseph Street
Post Office Box 1706
Mobile, Alabama 36601

Dear Mr. Sess:

As you know, your client, Wiley Fairchild, made a proffer to the United States in connection with plea negotiations on November 1, 1984. We have evaluated this proffer and we have concluded that Mr. Fairchild is making a good faith effort to cooperate with the Government. If a plea agreement is reached between Mr. Fairchild and the United States consistent with the terms set in New Orleans and memorialized in a separate document (attached hereto), we would expect continuing cooperation from Mr. Fairchild, including complete and truthful testimony before the Grand Jury and at any and all trials that may follow from this investigation. In the event that we conclude (and it would be solely our determination) that such cooperation has been and is forthcoming, we would recommend to the sentencing judge that a prison sentence is not warranted in this case. If we conclude that the cooperation from Mr. Fairchild is not complete in any manner, we would be free, of course, to modify our recommendations. I know you understand as well that the Sentencing Judge would not be obliged to follow our recommendations.

Sincerely,

Paul E. Weingarten
Paul E. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

Enclosure

A TRUE COPY OF THESE COMMENTS
GIVEN & MADE BY:

BY:

Deputy Clerk



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIP
Nattiesburg Division

UNITED STATES OF AMERICA)

v.)

WILEY FAIRCHILD,)

Defendant)

Crim. No. 84-0009

PLEA AGREEMENT

1. The defendant, WILEY FAIRCHILD, will plead guilty to Count I of the indictment (gratuity).
2. The United States will move to dismiss Count II of the indictment (perjury).
3. The United States will make known to the sentencing court any and all cooperation that Wiley Fairchild provides.
4. The United States retains the right to allocute at sentencing.
5. Wiley Fairchild will not be prosecuted by the United States for any offense the facts of which are now known to the United States.

Reid Weingarten
REID WEINGARTEN
Attorney for the United States

Barry Hess
BARRY HESS
Attorney for the Defendant

Ray Nielsen Little
RAY NIELSEN LITTLE
Attorney for the United States

Wallace Gunn
WALLACE GUNN
Attorney for the Defendant

Wiley Fairchild
WILEY FAIRCHILD

Dated this 16th day
of November, 1984

A TRUE COPY, I HEREBY CERTIFY
Carmen A. Jones, Clerk





U.S. Department of Justice

RHW:ab
186-41-169

4

Washington, D.C. 20530

MAR 5 1985

Honorable Glenn L. White
District Attorney, Forrest County
Post Office Box 866
Hattiesburg, Mississippi 39401

Dear Mr. White:

I am an attorney with the Public Integrity Section of the Criminal Division of the United States Department of Justice and I am supervising the federal grand jury investigation now underway in Hattiesburg. In that regard I have come to know Drew Fairchild, who I understand is scheduled for sentencing on March 8, 1985 before Judge McKenzie in one of your cases. I am writing to advise you of our relationship with Mr. Fairchild.

Drew Fairchild has cooperated with us in our work. His cooperation has included grand jury testimony that we believe to be truthful as well as his availability for less formal interviews that have proven valuable to the investigation. Because our grand jury investigation is both ongoing and extremely sensitive, we cannot get into the substance of Mr. Fairchild's cooperation at this time. It is fair to say that Mr. Fairchild's cooperation has been very useful to us and we expect it to continue to be useful in the future.

It is our preference that if this letter is to be submitted to the Court for purposes of sentencing that it be submitted under seal and not be made part of the public record.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

Memorandum



Subject: Recommendation to Prosecute
Drew Fairchild

Date: MAR 22 1985
186-41-169
JNL:RHW:jev

To: Gerald E. McDowell, Chief
Public Integrity Section
Criminal Division

From: Dan Nielsen Little
David E. Weingarten
Attorneys
Public Integrity Section
Criminal Division

I. INTRODUCTION

On February 22, 1985, the grand jury in the Southern District of Mississippi returned an indictment against Robert Royals and Robert Watkins in the Southern District of Mississippi. A copy of the prosecution memorandum for that case is attached. As explained in that memorandum, Drew Fairchild and Robert Royals were co-managers of the Hattiesburg Municipal Airport at the time of the drug arrest in August 1980. We now seek an indictment against Drew Fairchild.

II. FACTS

Drew Fairchild's role in the drug smuggling conspiracy was to make "arrangements" for the drug smugglers, including arrangements at the airport, at local hotels, at the "stash house" for the marijuana, etc. He was to share a portion of the \$20,000 he was to be paid with Robert Royals, who would be present at the airport to assist in the landing and unloading of the planes. Drew is at least as culpable as Royals; he, like Royals, was present at several conspiratorial meetings with the smugglers, and was present at the airport during the preparation of planes to fly to South America. In addition, Drew did make the arrangements for the "stash house," for which he was paid \$1,000.

III. PROCEDURAL POSTURE

The focus of the Mississippi investigation has been to a large extent on the handling of the Drew Fairchild drug case in the state and federal systems. The arrest occurred August 4, 1980. In November 1980, Bud Holmes, the Forrest County D.A. indirectly summoned Drew to his office and inquired as to whether he or his father, prominent Hattiesburg businessman Wiley Fairchild, "had any money." When none was forthcoming, Holmes

EXHIBIT A

directed Drew to George Phillips, the U.S. Attorney. The federal government entered into a plea agreement with Drew on November 19, 1980, wherein it was agreed that in return for Drew's cooperation and his plea to felony charges, probation would be recommended. Drew did not in fact cooperate, and by the Spring of 1981, the U.S. Attorney's office viewed his agreement as breached and intended to prosecute him. In the summer of 1981, Bud Holmes sought and received the case from the federal system back into the state system and, in August 1981, Drew Fairchild and Robert Watkins (the pilot) were indicted by the Forrest County grand jury. In January of 1982, Drew pleaded guilty to the indictment in exchange for an oral promise that the state would recommend probation. Drew's case languished in the state system for over three years (in part, we believe, due to Judge Nixon's instructing Holmes in late 1982 to go easy on Drew, this instruction made at the request of Drew's father, Wiley, who had transferred valuable mineral royalty interests to Judge Nixon). On March 8, 1985, Drew was scheduled to be sentenced. On that date the present, Forrest County D.A. (and a friend and associate of Holmes) announced that he would not honor the plea agreement and that he would try Drew. A trial date has been set for May 13. Two explanations for this change of heart have been suggested: (1) that the present D.A. and judge could not withstand the public ridicule which would arise from Drew's getting probation, or (2) that the D.A. and the judge (both of whom are close friends of Holmes') have taken this action on Holmes' behalf to punish Drew for cooperating in the federal investigation of Royals (Holmes' former pilot), Nixon, and Holmes himself.

Drew's lawyer has contacted us requesting that we indict Drew federally so that he can plead guilty to a federal drug charge. Under Mississippi law a conviction or acquittal under federal law for the same act is a bar to prosecution in this state. Mississippi Code §41-29-151. Drew's lawyer is convinced that the only way for Drew to get a fair sentence is for his case to be in the federal system.

IV. ANALYSIS

Clearly we have an indictable case against Drew. The evidence against him is virtually identical to that against Royals, the testimony of the smugglers, Charles Malone and Duffy Nathan, corroborated by telephone toll records (many of which show calls from Malone to Drew's home number) plus Drew's own statements to the FBI in 1981 and to the grand jury and to us in 1984. (The former might be regarded as of a proffer and therefore inadmissible, but the latter, post-plea statements, would be admissible.)

Strategically, the decision whether to indict Drew is a difficult one. The arguments in favor of indicting him are: (1) We need the cooperation of Drew and his father, Wiley, in prosecutions of Bob Royals (presently under indictment), Bud Holmes (whom we hope to indict soon) and Judge Nixon. To the extent

→ FIRST
REASON to
→ USMA
FOR MOST
IMPROVING
REASON FOR
LAST 2
2-24-85

that indicting Drew now is desired by both Drew and his father, failure to do so could jeopardize the investigation. (2) Drew is unlikely to get a fair trial or sentence in the state system; given that both the D.A. and the judge are friendly with and, we believe, controlled by Bud Holmes. Justice would require an impartial federal forum, we believe. (3) Drew's case belongs in the federal system. The smugglers arrested at the scene were prosecuted federally, and Royals and Watkins are now being prosecuted federally. Drew was the only person connected with the bust to have a state disposition and the only one not federally prosecuted. Now that the state disposition is gone, there is no reason why his case too should not also be in the federal system. (4) It is in our interest to avoid the state trial of Drew while the Royals case is still pending. This is true because: (a) a trial of Drew would involve substantially the same evidence as our prosecution of Royals, which would mean that the D.A. would likely request access to our files on Royals. Given the D.A.'s apparent sympathies with Holmes (and therefore Royals) we believe anything we agreed to turn over would immediately be passed on to Royals; and (b) a trial of Drew would involve testimony from the same witnesses we would use, the drug smugglers, and would therefore generate Jencks cross-examination material for Royals to use at his trial.

There are also valid strategic reasons not to indict Drew, however. They are: (1) Ironically, our indictment of Drew would be a "favor" to him, and it is not in our interest to appear to be helping him too much when he is our witness. To minimize this, any plea agreement we made would contain no "deals" or promises to recommend a lenient sentence, and at sentencing we would lay out the facts of Drew's smuggling involvement as well as his cooperation in as even handed a fashion possible. (2) To the extent that a prosecution of Bud would focus on his "grabbing" Drew's case, by indicting Drew we place ourselves in what looks to be the same posture by "taking" the case from the state. This presumably would never be admissible in a prosecution of Holmes, however, as the handling of Drew's case after Bud left office in 1984 is irrelevant. (3) Similarly, to the extent that we might argue in a prosecution of Holmes that he corruptly let Drew's case drag on for years with no disposition, we undercut our argument as to its impropriety when, right after the state decides to prosecute Drew vigorously, we step in and prevent it. Again, however, there does not appear to us to be any way this evidence would be admissible in a prosecution of Bud.

V. CONCLUSION

On balance we believe the investigation would be best served if Drew's case had a federal disposition at this time. Accordingly, we recommend that the attached indictment be presented to the grand jury in the Southern District of Mississippi.

Attachment

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA	•	CRIMINAL NO. H85-00012(L)
VERSUS	•	
WALTER L. NIXON, JR.	•	
• • • • •	•	

MOTION FOR PRODUCTION OF EXCULPATORY EVIDENCE
AND FOR DISCLOSURE OF IMPEACHING EVIDENCE

COMES NOW the Honorable Walter L. Nixon, Jr., defendant herein, who, through undersigned counsel, pursuant to the decisions of the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. U.S., 405 U.S. 150 (1972), and United States v. Agurs, 427 U.S. 97 (1976), moves for the entry of an order directing the United States to make a thorough and immediate inquiry, and to thereafter disclose and produce, prior to trial, all evidence favorable to the accused which is in its possession, custody, or control; and to disclose all favorable evidence the existence of which is known, or which could become known, through the exercise of due diligence by the United States. Such disclosure should include, but is not limited to, such exculpatory or impeaching evidence which may be contained in:

I.

All statements of persons who have been interviewed by an agent of the Government in connection with the subject matter of this case, regardless of whether or not the Government intends to call them as witnesses at trial.

II.

Memoranda or summaries of any oral statements made to an agent of the Government by any person in connection with the subject matter of this case,

regardless of whether the statement, if in writing, has been signed or approved by the witness and regardless of whether the statement relates to the proposed subject matter of the direct testimony of witness at trial.

III.

The stenographic recording or transcription of any oral statement made by any person to an agent of the government or in the hearing of such agent, in connection with the subject matter of this case, regardless of whether the stenographic recording or transcription is a substantially verbatim recital of the statement, or the statement was recorded contemporaneously with its making, or the statement relates to the proposed subject matter of the direct testimony of the witness at trial. This request specifically includes such exculpatory or impeaching evidence, or such inconsistent statements as may be contained in: (1) the FBI "302's" prepared by the FBI in connection with all persons interviewed in this case, and (2) the grand jury testimony of anyone who appeared before any grand jury investigating any matter related to this proceeding, including, but not limited to: Wiley Fairchild, Drew Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, R. L. "Skip" Jarvis, Marcia Bailey, Shirley Justice, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr.

IV.

Statements of any person, or memoranda and/or recordings of any oral statements of any person, in possession of the Government, regardless of whether these were made to any agent of the Government.

V.

Any memoranda, documents or statements used by the Government in connection with the investigation of this case regardless of whether such were prepared by the Government. This specifically includes all federal and state law enforcement or

investigative agency files, records, or documents which related to any investigation of any individual connected to this case, including, but not limited to: Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr.

VI.

Any memoranda, reports or documents prepared in connection with the grant of immunity to any person interviewed in the course of this investigation and any document reflecting the grant of immunity to any such person.

VII.

Any and all personal or business records prepared by or belonging to Walter L. Nixon, Jr., or copies thereof, held by the Government.

VIII.

Any memoranda, reports or documents prepared in connection with any investigation of the conduct of Walter L. Nixon, Jr. performed or prepared by any Federal agency, the Justice Department, or any law enforcement agency in the State of Mississippi, or any agents of these above named agencies.

IX.

All records and information revealing prior felony convictions or guilty verdicts or juvenile adjudications attributed to each individual interviewed by the Government, including but not limited to relevant "rap sheets", and such information for each person who will be called as a witness by the Government.

X.

All records and information revealing prior misconduct or bad acts attributed to each Government witness.

XI.

Any and all consideration or promises of consideration given to or on behalf of any witness, or expected or hoped for by any witness. By consideration, defendant Walter L. Nixon, Jr. refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to the witness, or to persons of concern to the witness, including but not limited to: formal or informal, direct or indirect consideration; leniency, favorable treatment or recommendations or other assistance with respect to any pending or potential criminal parole, probation, pardon, clemency, civil, tax court, court of claims, administrative or other disputes with the Government, or with any authority or any other parties; criminal, civil, or tax immunity grants; relief from forfeiture, payments of money, rewards or fees, witness fees, and special witness fees, provisions of food, clothing, shelter, transportation, legal services, or any other benefits; placement in a "witness protection program," and anything else which arguably could reveal an interest, motive, or bias of the witness in favor of the Government or against the defense, or act as an inducement to testify or to color testimony.

XII.

All threats, expressed or implied, direct or indirect or other coercion made or directed against any witness or potential witness, criminal prosecution, investigations, or potential prosecution pending but which could be brought against such persons; any probationary, parole, deferred prosecution or custodial status of the witness in any civil, tax court, court of claims, administrative, or other pending or potential legal disputes with the Government, or over which the Government has real, apparent, or perceived influence. This specifically includes any offers made or agreements proposed to John Stocks or A. Eugene Lewis with regard to their prosecution in the matter entitled: U.S.A. v. John R. Stocks and A. Eugene Lewis, #H85-00014(B) in the

Southern District of Mississippi. It also includes any investigations and/or threatened prosecutions of Carroll Ingram, both federal and state.

XIII.

The existence and identification of each occasion in which any prospective witness has testified before any court, grand jury, tribunal or other hearing body with respect to this defendant, the subject of this investigation, the facts of this case or any related case.

XIV.

The existence and identification of each occasion in which each witness who was or is a "co-operating individual," accomplice, co-conspirator, or expert has testified before any court, grand jury, or other tribunal body. Please annex transcripts from all said appearances.

XV.

All statements made by each witness who is a co-operating individual made to any Government agent during the investigation culminating in the instant indictment, including notes, memoranda, recordings, and other written or recorded results of interviews with said witnesses.

XVI.

All financial records, or documents filed with a federal or state agency, filed by any witness or informer, wherein said documents contain exculpatory evidence, regardless of whether the Government intends to use these documents at trial, or to call the co-operating individual as a witness at this trial, including those which relate to R.L. "Skip" Jarvis.

XVII.

All personal files for the witnesses; the existence and the identity of all federal state and local Government files for the witness and the existence and identity of all

official internal affairs, internal investigations or public integrity investigation files relating to or connected with each witness who was or is a law enforcement officer.

XVIII.

Any and all evidence, including books, papers, documents, statements, either written, or oral, or other tangible or intangible thing which establishes, tends to establish, or arguably could be of assistance in establishing the following:

- (A) That Walter L. Nixon, Jr. did not specifically request to be placed in an oil and gas investment with Wiley Fairchild.
- (B) That the price paid by Walter L. Nixon, Jr. for the three mineral royalty interests described in the indictment was a reasonable price, i.e., that the price paid was the fair market value of the interests.
- (C) That the mineral royalty interests were given a date to correspond with a verbal agreement between Wiley Fairchild and Walter L. Nixon, Jr.
- (D) That Wiley Fairchild did not ask Walter L. Nixon, Jr. to influence the handling of a criminal prosecution involving his son, Drew Fairchild, by interceding on his behalf with Paul H. "Bud" Holmes.
- (E) That the allegedly false declarations in Counts II, III, and IV of the indictment are not material, as that word is used in Title 18, United States Code, Section 1623.

XIX.

All of the records and/or information which arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the Government's evidence, or which could lead to such records or information.

XX.

The same records and information as requested in all items above with respect to each non-witness declarant whose statements are to be offered as evidence.

Respectfully submitted, this 7th day of January, 1995.

MS Fawer
MICHAEL S. FAWER

[Signature]
HERBERT V. LARSON, JR.

FAWER, BRIAN, HARDY & ZATZKIS
700 Camp Street
New Orleans, Louisiana 70130
(504) 529-9500

CERTIFICATE OF SERVICE

I, Herbert V. Larson, Jr., hereby certify that I have this day served a copy of the foregoing pleading upon Reid H. Weingarten, Assistant United States Attorney and Jan Nielsen Little, Assistant United States Attorney, Public Integrity Section, Criminal Division, Department of Justice, 3011 35th Street N.W., Washington, D.C., 20008, via Federal Express delivery service.

Signed, this 2nd day of September, 1985.


HERBERT V. LARSON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA	•	CRIMINAL NO. H85-00012(L)
VERSUS	•	
WALTER L. NIXON, JR.	•	
• • • • •	•	

MEMORANDUM IN SUPPORT OF
MOTION FOR PRODUCTION OF EXCULPATORY EVIDENCE
AND FOR DISCLOSURE OF IMPEACHING EVIDENCE

MAY IT PLEASE THE COURT:

Pursuant to the settled principles of Brady v. Maryland, 373 U.S. 83 (1963), and U.S. v. Agurs, 427 U.S. 97 (1976), the Government may not suppress evidence favorable to the accused, and has a duty to produce evidence which is materially favorable to the accused either as direct or impeaching evidence. All those documents which are exculpatory must be provided to the defense and merely because a document sought may be characterized as an "internal memorandum," it cannot be treated as an exception to the mandate of Brady and Agurs.

More than one court has noted that the test is not whether the attorneys for the Government themselves believe the material to be favorable to the defense, but whether the material "could fairly be construed as favorable to the defendant and material to the issue of guilt or punishment..." U.S. v. Partin, 320 F. Supp. 275, 285 (E.D. La. 1970). Doubts as to whether particular items of evidence or types of information could be construed in the defense's favor should be resolved by their production to the defense. U.S. v. Perkins, 383 F. Supp. 922, 930 (N.D. Ohio 1974). The evidence itself need not be admissible at trial, for material containing leads to possible exculpatory evidence must also be produced under Brady. U. S. v. Ahmad, 53 F.R.D. 186 (N.D. Pa. 1971).

All information relating to a witness' credibility clearly must be provided to the defendant under Brady and Agurs. Under Rule 602(b) of the Federal Rules of Evidence, the court has discretion to permit a defendant to cross-examine a witness as to specific instances of misconduct, so-called bad acts, even though such behavior does not amount to felony convictions. The purpose of such testimony is specifically to attack the witness' character, and therefore the Government should be ordered to disclose to the defense any behavior of its witnesses which arguably might constitute such bad acts. Equally, the Government has an obligation to disclose any and all consideration which it has held out to a witness, or which the witness objectively hopes for or anticipates, since such consideration directly gives rise to an inference of interest. See generally, U. S. v. Maver, 556 F.2d. 245 (5th Cir. 1977). The obligation includes the total compensation or benefits paid to or expected by each witness, U.S. v. Antone, 603 F.2d. 556 (5th Cir. 1979); any beneficial treatment in taxation, U.S. v. Wilson, 437 F.2d 862 (2nd Cir. 1970); any assistance in the business world, U.S. v. DeCarlo, 575 F.2d. 952 (1st Cir. 1978), cert. denied 493 U.S. 834 (1978); any assistance in avoiding prosecution by other authorities, Azbill v. Pogue, 534 F.2d. 195 (9th Cir. 1976); and any immunity grants. These examples, of course, are only intended to make the principle clear, and do not exhaust the range of consideration which each witness may have received or expected to receive.

Lastly, the accused is entitled to be advised of any matter which might cause a witness to color his testimony in favor of the Government out of fear or interest in self-preservation. Thus, the Government must disclose both the stick and the carrot. U.S. v. Sutton, 542 F.2d 1239 (4th Cir. 1976). Therefore, if the Government is in possession of any information which might reveal that anyone became an informer in this case because of any pressure applied to him by any other federal law enforcement or regulatory body, the Government should be required to disclose this information.

Finally, the production of the requested material should be required promptly and not postponed, for reasons which are obvious:

If it is to be of any use to him at all, common sense dictates that evidence in the Government's possession favorable to the defendant should be made available to him far enough in advance of trial to allow him sufficient time for its evaluation, preparation, and presentation at trial. Otherwise, the trial might well have to be interrupted for an ordinate length of time until the defendant has had an opportunity to explore all the ramifications of the Government's disclosure, track down distant witnesses, examine documents or the like. Such probable delay could sensibly be avoided by pre-trial disclosure in those cases where disclosure is called for. U.S. v. Partin, 320 F. Supp. 275,285 (E.D. La. 1970)

Respectfully submitted, this 7th day of November, 1985.

M.S. Fawer
MICHAEL S. FAWER

[Signature]
HERBERT V. LARSON, JR.

FAWER, BRIAN, HARDY & ZATZKIS
700 Camp Street
New Orleans, Louisiana 70130
(504) 528-9500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

WALTER L. NIXON, JR.

Defendant.

CR No. H85-00012 (L)

ORDER

This matter is before the Court on certain pretrial motions. Each motion will be addressed separately.

DEFENDANT'S MOTION FOR A BILL OF PARTICULARS

In this motion, defendant Nixon seeks an order requiring the United States to file a bill of particulars responding to fourteen matters raised in the indictment. The purpose of a bill of particulars is to enable the defendant to prepare his defense, to avoid surprise at trial and to prevent double jeopardy. U.S. v. Harbin, 601 F.2d 773, 778 (5th Cir. 1979); U. S. v. Haas, 583 F.2d 216, 221 (5th Cir. 1978), cert. denied, 440 U.S. 981 (1979). It is not a discovery device, however, to acquire evidentiary information about the government's case. U. S. v. Davis, 582 F.2d 947, 951 (5th Cir. 1978), cert. denied, 441 U.S. 902 (1979); U.S. v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978). Whether to order a bill of particulars is within the discretion of the Court. U.S. v. Martino, 648 F.2d 367, 383 (5th Cir. 1981); U.S. v. Mackey, 551 F.2d 967, 970 (5th Cir. 1977).

1 - 3

In light of U.S. v. Evans, 572 F.2d 455 (5th Cir. 1978), defendant has narrowed his request in his supplemental brief on items 1, 2, and 3 to the following:

A. Both the government and the defendant should agree that the official and the official position in question are Judge Nixon and his federal judgeship. The government in its response has already answered that in the affirmative.

B. Both parties should agree that the gratuity at issue is the three mineral royalty interests conveyed by Wiley Fairchild. The government answered that in the affirmative.

C. The defendant requests specifics on the government's position that the expressions "official acts," "in the future," and "matters of interest to Wiley Fairchild" found in Count I are to be given their normal meaning. That is "official acts" means acts relating to Judge Nixon's position; "in the future" means at a time subsequent to Judge Nixon's receipt of the mineral interests; and "matters of interest to Wiley Fairchild" refers to matters affecting Fairchild's personal and business interests.

A careful reading of U.S. v. Evans at pages 479, 481 states:

. . . More specifically, it is not necessary that the official actually engage in identifiable conduct or misconduct nor that any specific quid pro quo be contemplated by the parties nor even that the official actually be capable of providing some official act as quid pro quo at the time. . .

. . .

. . . The gravamen of each offense, then, is not an intent to be corrupted or influenced, but simply the acceptance of an unauthorized compensation. . .

• • •

... Certainly, these statutes reach improper attempts to influence the future course of official conduct.

The defendant is not entitled to any further response on the first three items of his motion for a bill of particulars.

4 - 5

Requests four and five seek detailed disclosure of the government's evidence prior to trial and the government need not respond to them.

6

The government has answered.

7

The government has answered.

8 - 9

Requests eight and nine seek specific evidentiary matters and the government need not respond to them.

10

The government has answered sufficiently.

11

The government has answered.

12 - 13 - 14

Requests twelve, thirteen and fourteen request specific evidentiary matters and the government need not respond to them.

MOTION FOR DISCOVERY OF ELECTRONIC SURVEILLANCE

1

The government has responded that there were no Title III wiretaps in this case.

3

2

The government has responded that the tape recording of Judge Nixon which occurred during the April 9, 1984 interview has been turned over to the defense.

3

The government has responded that tapes made by the government and in the possession of the government relating to this case will be turned over pursuant to the Jencks Act and Brady v. Maryland, 373 U.S. 83 (1963).

MOTION FOR PRETRIAL DISCLOSURE OF ALL EVIDENCE
WHICH THE GOVERNMENT INTENDS TO OFFER PURSUANT TO
RULE 404(B) OF THE FEDERAL RULES OF EVIDENCE

The government has responded that in its trial brief, it will outline generally the matters which it intends to introduce. The brief will be filed one week prior to trial.

MOTION FOR DISCOVERY AND INSPECTION

1

Defendant has requested that the government turn over to him any copies of statements made by defendant. The government responds that this production has been made.

2

Defendant asks for any material, books, documents, etc. belonging to Walter L. Nixon. The government responds that this production has been made.

A. Defendant requests all files of any federal law enforcement agency relating to Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carro'l Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr.

4

The government responds that it has produced all material which the defendant is entitled to pursuant to Rule 16 regarding Drew Fairchild, Wiley Fairchild, Bud Holmes and Carroll Ingram. The government states that it will produce other material regarding those individuals pursuant to the Jencks Act and Brady.

The government states that John Stocks, Gene Lewis, and Pat McMullan will not testify at trial and, accordingly, any material relating to these individuals need not be produced unless the government changes its position and decides to use them as witnesses. If there is any Brady material in the Government files relating to these three witnesses, it shall be turned over to the defendant.

B. Defendant requests all the documents in the files of Mississippi law enforcement agencies concerning Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr. The government responds that it has turned over copies of records from these files. Glenn White, Forest County District Attorney, has advised that he will make available to the defense counsel all files in his office.

C. Defendant requests material concerning the three wells. The government responds that it has turned over all the material to the defendant which it has and will make available to defense counsel the remaining material.

3

Defendant requests copies of tests and experiments which the government has in its control. The government has submitted a

5

polygraph examination report and internal memorandum to the Court for an in camera inspection. The defendant is not entitled to the internal memorandum. He is entitled to tests; however, polygraphs are not admissible in evidence and the Court would not require the government to submit polygraph tests. Nevertheless, the government has agreed to submit to the defense the polygraph report on one of the witnesses.

MOTION FOR PRODUCTION OF EXCULPATORY AND IMPEACHING EVIDENCE

I

Defendant requests all statements of persons who have been interviewed by agents of the government whether or not it intends to call them as witnesses. The government has responded that it intends to comply with Brady and the Jencks Act with respect to this material. It is not required to disclose to defendant the entire file nor matters which are irrelevant to this case unless they contain Brady or Jencks Act material. Brady v. U.S., 373 U.S. 83 (1963); Giglio v. U.S., 405 U.S. 150 (1972); U. S. v. Agurs, 427 U.S. 97 (1976).

2 - 3 - 4

These requests are for specific evidentiary material and unless there is Brady or Jencks Act material, these materials need not be furnished to defendant.

5

Defendant requests documents relating to Drew Fairchild, Wiley Fairchild, Paul H. "Bud" Holmes, Carroll Ingram, John R. Stocks, A. Eugene Lewis, and W. P. "Pat" McMullan, Jr. Documents relating to those individuals who will not be called as witnesses

need not be produced unless they contain Brady material. Documents relating to those individuals who will be witnesses shall be produced pursuant to the Jencks Act and Brady v. Maryland.

6

Defendant requests any information concerning grants of immunity to any person. This the government shall supply.

7

Defendant requests any personal or business documents belonging to defendant Nixon. The government has already complied with this request.

8

Defendant requests any reports or documents relating to the conduct of Walter L. Nixon. The government has complied with this request insofar as it relates to the instant case. Investigations of defendant in any other matters which do not have to do with this case will not be offered in evidence by the government and need not be produced by the government.

9

Defendant requests the rap sheet of any person who will be called as a witness by the government. The government shall supply this to the defendant.

10

Defendant requests any acts of misconduct known to the government about any of the witnesses it may use. The government declines to answer. The Court is of the opinion that if the government knows of any specific acts which are probative of

7

untruthfulness of any of its witnesses, that information shall be furnished to the defendant. Rule 608(b), F.R.Evid.

11

Defendant requests information about formal or informal grants of immunity or the placement in the Witness Protection Program or anything else that has been given or promised to any of the government's witnesses. The government shall supply such information to the defendant.

12

Defendant requests information about any agreements with John Stocks or Eugene Lewis and any investigation of Carroll Ingram. The government declines to disclose anything concerning Stocks or Lewis for the reason that they are not going to be witnesses. The Court agrees unless there is Brady material. The government responds that it has turned over a letter to Ingram's attorney written by the government which contains the government's position with regard to Carroll Ingram.

13 - 15

These requests are not covered by Brady and the government has agreed that it will provide Jencks Act material one week before trial for any witnesses whom it plans to use.

16

Defendant requests exculpatory information relating to Skip Jarvis. The government responds that it knows of none.

17

Defendant requests all state and local files for witnesses who were or are law enforcement officers. The government

responds that it will make an ex parte submission of the material to the Court.

18

Defendant requests specific information concerning the oil and gas investments of Walter L. Nixon. The government responds that it has already turned over all the information it has and any additional information will be found in the Jencks Act material which will be disclosed one week prior to trial.

19 - 20

Defendant requests all records and information which would be impeaching of the government's evidence, including witnesses and non-witnesses. The government responds that it knows of no such evidence except that which has been and will be turned over by provisions of Brady and Jencks.

BRADY MATERIAL

There appears to be some dispute between the parties with respect to the timing of disclosure of Brady material contained in Jencks Act material. To resolve this issue, the Court orders that the government produce to defendant as soon as possible any material presently known by the government to be exculpatory.

DATED this 24th day of December, 1985.

E. H. McNeill
UNITED STATES DISTRICT JUDGE

U.S. Department of Justice

RHW:JNL:ab
186-41-162

Washington, D.C. 20530

January 7, 1986

Mr. Michael S. Fawer
Fawer, Brian, Hardy & Zaczkis
700 Camp Street
New Orleans, Louisiana 70130

Re: United States v. Nixon
CR. NO. HES-00012(L)

*Nixon inquiry
in Grand
jurisdiction*

Dear Mr. Fawer:

At our meeting on January 3, 1986, you stated that you understood that the federal government had made some sort of "deal" with Drew Fairchild prior to his federal indictment which included a resolution of his sentence in the state system. We responded that there was no federal plea bargain with Drew Fairchild, but that we would review our files to insure that there were no other favors or deals given to him. After reviewing our files we have the following information to report to you.

In 1984, Drew Fairchild began cooperating with the federal government in its investigation of the transactions between Wiley Fairchild and Judge Nixon, and in its investigation concerning the 1980 drug case. Drew's state sentence was continued several times during 1984, at his request, in part because of the federal investigation.

Drew Fairchild was scheduled to be sentenced in state court on March 8, 1985, and in contemplation of that, on March 5, I sent a letter to District Attorney Glenn White detailing Fairchild's cooperation. You have a copy of this letter.

On March 8, Fairchild's state plea agreement was vacated, Fairchild withdrew his guilty plea, and a trial date of May 13 was set for his state charges.

Shortly thereafter, Fairchild's attorney contacted us and requested that we proceed federally against Fairchild. No agreements, deals, or promises were made with this attorney.

- 2 -

In mid-March, we decided to seek an indictment of Drew Fairchild. While the request of Fairchild's attorney was noted, it was but one of several factors weighing into the decision to recommend an indictment. The primary factor was our belief that by March, 1985, the drug case was a federal matter that could best and most fairly be handled in Federal Court. Fairchild was indicted on March 29, and he pleaded guilty on the same day. There was no plea agreement; he pleaded guilty to the entire indictment.

Fairchild's federal sentence was scheduled for July 11, 1985. Prior thereto, Fairchild's attorneys, the District Attorney, and Judge McKenzie apparently negotiated a deal regarding Fairchild's state sentence. While Fairchild's attorneys advised us of this development, we played no part at all in this deal.

After Fairchild reported to Federal prison he filed a Rule 35 motion, which we opposed and which was denied.

I believe this will answer your questions about our negotiations with Drew Fairchild.

Sincerely,

Reid H. Weingarten

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

cc: Honorable James M. Meredith
Chief United States District Judge
Eastern District of Missouri

A

THE STATE OF MISSISSIPPI, FORREST COUNTY

CIRCUIT COURT, July TERM, 1981

The Grand Jurors for the State of Mississippi, elected, impanelled, sworn and charged, in and for Forrest County, State aforesaid, in the name and by the authority of the said State of Mississippi, upon their oath, present: that Beddie Andrew Fairchild and Robert T. Watkins, in conjunct: beginning with each other on the 27th day of July 1980 and continuously 19, in Forrest County aforesaid: until August 4, 1980

did willfully, unlawfully, and feloniously conspire and agree together to commit a crime, to-wit: possession of more than one (1) kilogram of marijuana with the intent to deliver the same to individuals unknown, contrary to and in violation of the Uniform Controlled Substances Act, as amended,

against the peace and dignity of the State of Mississippi.



A. H. McCarver
Foreman of the Grand Jury.
[Signature]
District Attorney.

CAPIAS

FILED

Marian Brown
CIRCUIT CLERK

THE STATE OF MISSISSIPPI, FORREST COUNTY
CIRCUIT COURT

AUG 28 1981

To The Sheriff of Forrest County, Greeting:

We command you, to take the body of Hedlett Andrew Finchill
If found in your county, and him safely keep, so as to have him before the
Honorable, the Circuit Court of Forrest County, in said State, on the 1st day of September
1981, to answer then and there unto the State of Mississippi of a charge of

Conspiracy

EXHIBIT
3/5

by indictment in said Court, at the August Term, A.D. 1981, thereof.

Herein fail not, and have then there this writ, with the manner you have executed the same.

Given under my hand and seal and issued this the 26th day of August, 1981.

Marian Brown
Clerk of the Circuit Court.

By Helene McBride, D. C.

FILED
MAR 21 1985

T. W. Brown
CIRCUIT CLERK

*Filed by Court
on March 8,
1985
L.W. McK.*

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CAUSE NUMBER 10,041

REDDITT ANDREW FAIRCHILD

DEFENDANT

O R D E R

ON THIS DAY this Cause came on to be heard upon the Defendant's Motion to Withdraw his Plea of Guilty, for the reason that certain inducements had been made to him in order to affectuate a Plea of Guilty, by prior administration, and the Court after considering the same, finds that the Defendant's Motion is well taken and should be sustained.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the previous Plea of Guilty be Withdrawn and a Plea of Not Guilty be entered.

SO ORDERED AND ADJUDGED on this the 8th day of March, A.D., 1985.

Paul L. McGavin
CIRCUIT COURT JUDGE

FILED
APR 9 1955

IN THE CIRCUIT COURT OF FOREST COUNTY, MISSISSIPPI

Marion Brown
DEPUTY CLERK

STATE OF MISSISSIPPI,

Plaintiff,

v.

EDDY FAIRCHILD,

Defendant.

CASE NO. 10041

PLEA BAR - PLEA OF AUTOMATIC CONVICTION OR POTION TO DISMISS

Comes now Eddy Fairchild, Defendant, by his attorney, and for plea says:

The State ought not to further prosecute this indictment against him because at a regular session of the United States District Court of Mississippi on, to-wit, March 29, 1953, this Defendant was indicted, entered a plea of guilty and was adjudged guilty for the same act charged in the indictment herein.

A certified copy of the Federal indictment and the Judgment of Conviction therein are attached hereto as Exhibits A and B and incorporated herein by reference.

Further prosecution of this indictment is barred under the provisions of Section 41-29-151 Code of Mississippi.

WHEREFORE, premises considered, Defendant prays that this Honorable Court will dismiss the present indictment and discharge this Defendant.

Respectfully submitted,

[Signature]
EDDY FAIRCHILD
301 St. Joseph Street
Post Office Box 1706
Mobile, Alabama 36633
Telephone: (205) 432-4546

Marion Brown
DEPUTY CLERK

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this the 9th day of April, 1955, caused a copy of the foregoing to be placed in the United States mail, properly addressed and first class postage prepaid, or I have hand-delivered the same.

[Signature]
MARION BROWN

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Nattiesburg Division

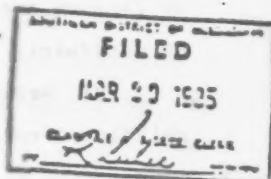
UNITED STATES OF AMERICA

v.

REDDITT "DREW" FAIRCHILD,
Defendant.

CR. No.

H/S-0125



INDICTMENT

THE GRAND JURY CHARGES:

COURT ONE

1. From on or about February, 1980 and continuously thereafter up to and including August 4, 1980, in the Southern District of Mississippi and elsewhere, Defendant REDDITT "DREW" FAIRCHILD together with unindicted co-conspirators Robert Royals, Robert L. Watkins, Charles Malone, Malcolm "Duffy" Nathan, Mario Torres, and Kenneth Matfield, willfully and knowingly did conspire, confederate, and agree together with each other and with others whose names are known and unknown to the Grand Jury, to import marijuana, a Schedule I controlled substance, into the United States from Colombia, South America and other locations outside the United States, contrary to Title 21, United States Code, Section 952(a).

Means and Methods of the Conspiracy

2. It was a part of the conspiracy that:

(a) Unindicted co-conspirator Robert Watkins, with the help of unindicted co-conspirators Malcolm "Duffy" Nathan and Mario

Torres, would and did agree to pilot planes from the United States to Jamaica and Colombia and back to the United States with loads of marijuana;

(b) Defendant REDDITT "DREW" FAIRCHILD, together with unindicted co-conspirator Robert Royals, agreed to assist in the preparation of drug smuggling planes and the landing and unloading of said planes at the Hattiesburg Municipal Airport;

(c) Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Charles Malone agreed to make arrangements for the offloading and the storage of the marijuana in or near Hattiesburg, Mississippi; and

(d) Unindicted co-conspirators Charles Malone and Kenneth Hatfield agreed to make arrangements for the sale of marijuana.

Overt Acts

3. In or about the spring of 1980, Defendant REDDITT "DREW" FAIRCHILD met with unindicted co-conspirators Charles Malone, Malcolm "Duffy" Nathan, and Robert L. Watkins, in Hattiesburg, Mississippi to make arrangements for the importation of marijuana into Hattiesburg, Mississippi.

4. In or about the summer of 1980, Defendant REDDITT "DREW" FAIRCHILD made arrangements for the availability of a "stash house" in or near Hattiesburg, Mississippi in which to store marijuana.

5. In or about late July, 1980, unindicted co-conspirator Robert L. Watkins flew an airplane to Colombia, South America, to obtain marijuana.

- 3 -

6. In or about late July or early August, 1980, unindicted co-conspirator Robert Royals was present at the Mattiesburg Municipal Airport and assisted in the preparation and planning for the importation of marijuana into the United States by unindicted co-conspirator Robert L. Watkins.

7. On or about August 1, 1980, Defendant REDDITT "DREW" FAIRCCHILD and unindicted co-conspirator Robert Royals drove to the "stash house" and in the course of the trip met with unindicted co-conspirator Charles Malone.

8. On or about the night of August 3, 1980, unindicted co-conspirator Robert Royals was present at the Mattiesburg Municipal Airport waiting for the plane piloted by unindicted co-conspirator Robert L. Watkins to land.

9. On or about the night of August 3, 1980, unindicted co-conspirator Robert Watkins landed an airplane containing approximately 2200 pounds of marijuana at the Mattiesburg Municipal Airport.

In violation of Section 963 of Title 21, United States Code.

A TRUE BILL:

David M. Walsh
FOREMAN

Reid H. Weingarten
REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974

A TRUE COPY, I HEREBY CERTIFY.
CLERK A. P. FLEM

M. S. C.

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSI:

FILED
MAY 29 1965

STATE OF MISSISSIPPI,

Plaintiff,

v.

RADDITT ANDREW FAIRCHILD,

Defendant.

CAUSE NUMBER: 10,041

Mariani Brown
Circuit Clerk

MOTION TO QUASH THE INDICTMENT, OR,
IN THE ALTERNATIVE, TO DISMISS THE PROSECUTION
OF THE INDICTMENT FOR VIOLATION OF A PLEA BARGAIN AGREEMENT

Comes now the Defendant, Radditt Andrew Fairchild, and moves this Honorable Court to quash the indictment, or, in the alternative, dismiss the prosecution on the grounds that it violated the plea agreement reflected on the docket sheet on file in the office of the Circuit Clerk of Forrest County, Mississippi entered March 19, 1962. The plea agreement reached between the Defendant, represented by his then attorney Karl Kepper and the State of Mississippi represented by then District Attorney Bud Holmes and concurred in by then Circuit Judge Jack B. Weldy, was the recommendation of five years probation and a fine as reflected on the docket sheet entry of that date. In consideration of this recommendation the Defendant Fairchild pled guilty to the charge in this indictment and agreed to testify against his co-defendant Watkins.

The Defendant Fairchild did in fact plead guilty and has at all times been ready willing and able to assist the prosecution of the co-defendant by offering truthful testimony concerning the facts of this case. This testimony has not been received against the co-defendant Watkins due to the failure of the State of Mississippi acting by and through its agents, servants and employees to apprehend Mr. Watkins and produce him for trial. Defendant Fairchild incorporates herein by reference the docket sheet entries on the docket sheet in this case relating to the Defendant Watkins.

This Defendant was notified shortly prior to March 8, 1965 that the present District Attorney of Forrest County, Mississippi and the present Circuit Judge presiding over this case would reject the plea agreement made with the State of Mississippi in 1962 and fail to honor its terms.

This Defendant had been cooperating with federal authorities for a

substantial time prior to March 8, 1965 concerning the facts relating to the events described in the indictment in this case and other matters in reliance on the State of Mississippi honoring its plea agreement of March 19, 1962.

Upon being informed in open Court in the Circuit Court of Forrest County, Mississippi March 8, 1965 that the State of Mississippi would not honor its plea agreement in this matter the Defendant withdrew his plea of guilty.

This Defendant was subsequently indicted and convicted in the United States District Court for the Southern District of Mississippi for the same facts charged in this indictment. The subsequent prosecution and conviction of this Defendant were the direct and proximate results of the failure of the State of Mississippi to honor its plea bargain with this Defendant entered March 19, 1962. The United States of America would have refrained from prosecuting this Defendant under its Petite Doctrine.

WHEREFORE premises considered, Defendant moves this Honorable Court to make a finding that:

- A. Defendant entered a plea bargain with the State of Mississippi March 19, 1962.
- B. Defendant entered a plea of guilty March 19, 1962 as a result of the plea bargain.
- C. Defendant agreed to testify against the co-defendant Watkins as part of said plea bargain.
- D. Defendant has at all times been ready, willing and able to give truthful testimony in cooperation with the plea bargain.
- E. The Defendant is not at fault for the failure of the State of Mississippi to produce co-defendant Watkins for trial.
- F. The Defendant in reliance on this plea bargain has assisted federal authorities in the further investigation of the underlying facts of this case and other matters.
- G. That the Defendant was indicted and convicted by the United States for the matters concerning the facts of this case as a result of the failure of the State of Mississippi to honor its plea bargain in this matter.
- H. That the reliance by the Defendant on his plea bargain in this matter has been to his substantial detriment.

I. That as a result of the above the indictment herein should be quashed, or, in the alternative, the prosecution of this case dismissed.

Respectfully submitted,

BY:

BY: Wallace R. Gunn

WALLACE R. GUNN
Attorneys for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that I have, on this the 27 day of May, 1985, served a copy of the foregoing upon the Honorable Glenn L. White, District Attorney for Forrest County, Mississippi, by placing a copy of same in the United States mail, properly addressed and first class postage prepaid.

BARRI ROSS

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

*filed by the court
on June 14, 1985
F
LWML*

STATE OF MISSISSIPPI

FILED
JUN 21 1985

VS.

CAUSE NO. 10,041

REDDITT ANDREW FAIRCHILD

Mariani Brown
CIRCUIT CLERK

DEFENDANT

ORDER OVERRULING AMENDED MOTION TO QUASH THE -
INDICTMENT, OR, IN THE ALTERNATIVE, TO DISMISS
THE PROSECUTION OF THE INDICTMENT FOR VIOLATION
OF A PLEA BARGAIN AGREEMENT

ON THIS DAY, there came on for consideration, the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement, and the Court, prior to hearing the said Amended Motion found as follows:

That, previously, this Court had set Monday, June 10, 1985, as the deadline for the filing and disposition of all pre-trial Motions, and that said deadline was stated in an Order executed by this Court on April 19, 1985.

That, on May 29, 1985, the Defendant, by and through his attorneys, filed with the Clerk of this Court, a Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement; this Court found that the said Motion was never legally noticed for disposition prior to the deadline for the disposition of Motions, but that the Judge of this Court conferred, by telephone, with Honorable Glenn White, District Attorney, and Honorable Wallace Gunn, one of the attorneys for the Defendant, on the date of June 10, 1985, and that, notwithstanding the fact that this Motion had not been legally noticed within the time prescribed by the Uniform ^{Amended} Rules of Circuit Court Practice, and by the statutes, that, by agreement between the District Attorney and the attorney for the Defendant, Mr. Wallace Gunn, that this Motion was set to be heard on June 14, 1985.

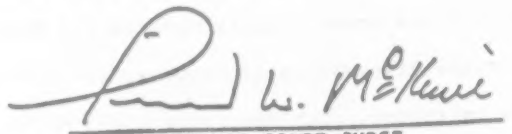
That, in the aforementioned telephone conference, the Judge of this Court, without making any specific ruling on the said Motion, informed the said Honorable Wallace Gunn that the possibility existed that the citing of the date of March 19, 1982, in the said Motion, as the date of the alleged "plea agreement reflected on the docket sheet on file in the office of the Circuit Clerk of Forrest County, Mississippi..." could be an erroneous date, since the only Order on March 19, 1982, in this matter was an Order of Continuance. That Mr. Gunn informed the Court that if the said date were erroneous that the correction would be made in the Motion.

That, on June 12, 1985, the Defendant, by and through his attorneys, filed with the Clerk of this Court an Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement.

That, after a recitation of the above, in the record, that this Court heard and maturely considered the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement, and that this Court finds that the same is without merit, and should be overruled and denied, in all particulars.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Amended Motion to Quash the Indictment, or, in the Alternative, to Dismiss the Prosecution of the Indictment for Violation of a Plea Bargain Agreement is hereby overruled and denied, in all particulars.

SO ORDERED AND ADJUDGED, on this, the 14th. day of June, 1985.


CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

REDDITT ANDREW FAIRCHILD

FILED
JUL 1 1985Cause No. 10,041

DEFENDANT

Marian Brown
CIRCUIT CLERKORDER OVERRULING PLEA BAR - PLEA OF AUTREFOIS CONVICT
OR MOTION TO DISMISS

ON THIS DAY, there came on, for ruling by the Court, the Plea Bar - Plea of Autrefois Convict or Motion to Dismiss, filed previously herein, by the Defendant, which said matter was previously taken under advisement by this Court, as the same is reflected in an Order of this Court, executed April 19, 1985, and filed herein on April 22, 1985, and the Court, after having considered the same, as well as having considered the arguments of the attorneys and their memorandum of law, is of the opinion that the same is without merit, and should be overruled and denied, in all particulars.

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the Plea Bar - Plea of Autrefois Convict or Motion to Dismiss is hereby overruled and denied, in all particulars; and this matter is set for trial on Monday, July 8, 1985, at 10:30 A.M., and this Court also Orders that the deadline for the filing and disposition of Motions has expired, and that this Court will not entertain any additional "pre-trial" Motions.

SO ORDERED AND ADJUDGED, on this, the 1st. day of July, 1985.



CIRCUIT COURT JUDGE

EXHIBIT

3 (a)

PETITIONER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

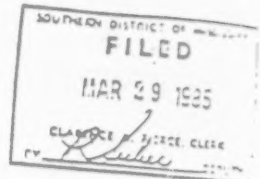
UNITED STATES OF AMERICA)

v.)

REDDITT "DREW" FAIRCHILD,)
Defendant.)

CR. No.

75-6805



INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

1. From on or about February, 1980 and continuously thereafter up to and including August 4, 1980, in the Southern District of Mississippi and elsewhere, Defendant REDDITT "DREW" FAIRCHILD together with unindicted co-conspirators Robert Royals, Robert L. Watkins, Charles Malone, Malcolm "Duffy" Nathan, Mario Torres, and Kenneth Hatfield, willfully and knowingly did conspire, confederate, and agree together with each other and with others whose names are known and unknown to the Grand Jury, to import marijuana, a Schedule I controlled substance, into the United States from Colombia, South America and other locations outside the United States, contrary to Title 21, United States Code, Section 952(a).

Means And Methods of the Conspiracy

2. It was a part of the conspiracy that:

(a) Unindicted co-conspirator Robert Watkins, with the help of unindicted co-conspirators Malcolm "Duffy" Nathan and Mario

- 2 -

Torres, would and did agree to pilot planes from the United States to Jamaica and Colombia and back to the United States with loads of marijuana;

(b) Defendant REDDITT "DREW" FAIRCHILD, together with unindicted co-conspirator Robert Royals, agreed to assist in the preparation of drug smuggling planes and the landing and unloading of said planes at the Hattiesburg Municipal Airport;

(c) Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Charles Malone agreed to make arrangements for the offloading and the storage of the marijuana in or near Hattiesburg, Mississippi; and

(d) Unindicted co-conspirators Charles Malone and Kenneth Hatfield agreed to make arrangements for the sale of marijuana.

Overt Acts

3. In or about the spring of 1980, Defendant REDDITT "DREW" FAIRCHILD met with unindicted co-conspirators Charles Malone, Malcolm "Duffy" Nathan, and Robert L. Watkins, in Hattiesburg, Mississippi to make arrangements for the importation of marijuana into Hattiesburg, Mississippi.

4. In or about the summer of 1980, Defendant REDDITT "DREW" FAIRCHILD made arrangements for the availability of a "stash house" in or near Hattiesburg, Mississippi in which to store marijuana.

5. In or about late July, 1980, unindicted co-conspirator Robert L. Watkins flew an airplane to Colombia, South America, to obtain marijuana.

- 3 -

6. In or about late July or early August, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport and assisted in the preparation and planning for the importation of marijuana into the United States by unindicted co-conspirator Robert L. Watkins.

7. On or about August 1, 1980, Defendant REDDITT "DREW" FAIRCHILD and unindicted co-conspirator Robert Royals drove to the "stash house" and in the course of the trip met with unindicted co-conspirator Charles Malone.

8. On or about the night of August 3, 1980, unindicted co-conspirator Robert Royals was present at the Hattiesburg Municipal Airport waiting for the plane piloted by unindicted co-conspirator Robert L. Watkins to land.

9. On or about the night of August 3, 1980, unindicted co-conspirator Robert Watkins landed an airplane containing approximately 2200 pounds of marijuana at the Hattiesburg Municipal Airport.

In violation of Section 963 of Title 21, United States Code.

A TRUE BILL:

David M. Ward, Jr.
FOREMAN

Reid H. Weingarten
REID H. WEINGARTEN

Trist Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
202 724-6974

A TRUE COPY, I HEREBY CERTIFY.
CLARENCE A. PETER, CLERK
S7: [Signature]
Deputy Clerk

EXHIBIT NO. G-5. EVID
 CAUSE NO. 485-00012(L)
 WITNESS Alvin Fairchild
 PAGES 2

JAN 28 1986

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF MISSISSIPPI
Alvin Fairchild REPORTER



No. _____

UNITED STATES DISTRICT COURT

SOUTHERN

District of MISSISSIPPI

Hattiesburg Division

THE UNITED STATES OF AMERICA

vs.

REDDITT "DREW" FAIRCHILD

INDICTMENT

Violation Charged:
21 U.S.C. §963

RECEIVED U.S. DISTRICT COURT	
FILED	
MAR 29 1935	
CLERK	A. J. FEE, CLERK
BY	<i>[Signature]</i>
	1935

A true bill

David M. Ward, Jr.

Foreman

Filed in open court this

day

of

A.D. 19

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Dated, \$

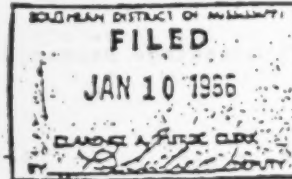
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG, MISSISSIPPI

UNITED STATES OF AMERICA

VERSUS

REDDITT "DREW" FAIRCHILD

CRIMINAL NO. 85-5(H)



SENTENCING PROCEEDINGS

THE HONORABLE JOHN V. PARKER, CHIEF JUDGE OF THE MIDDLE
DISTRICT OF LOUISIANA, BATON ROUGE DIVISION, PRESIDING

THURSDAY, JULY 11, 1985

APPEARANCES:

REID H. WEINGARTEN, ESQ. : For the
Trial Attorney : United States of America
Public Integrity Section :
U. S. Department of Justice :

BARRY HESS, ESQ. : For the Defendant
AND :
WALLACE R. GUNN, ESQ. :

Helen Bazzell
Official Court Reporter
907 Florida Boulevard
Baton Rouge, Louisiana 70801



I - N - D - E - X

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Statement By Mr. Hess On Behalf Of The Defendant 3

Proceedings Recessed For A Few Minutes 9

Statement By Mr. Weingarten On Behalf Of The Government 9

Statement By The Defendant 13

Statement By The Court 13

Sentence Of The Court 15

Defendant's Self-Surrender Authorized 16

1 THURSDAY, JULY 11, 1985

2 (Reporter's Note: Proceedings were commenced at
3 9:00 a.m.)

4 THE COURT: Please be seated.

5 (Reporter's Note: The deputy courtroom clerk called
6 the case.)

7 MR. HESS: The defendant is present and we're
8 ready, Your Honor.

9 THE COURT: All right. Mr. Hess, your client is
10 before the court for sentencing this morning. Do you have
11 anything to say on his behalf, prior to imposition of
12 sentence?

13 MR. HESS: Yes, Your Honor; if I may have a
14 moment.

15 THE COURT: Yes, indeed.

16 MR. HESS: My client is fully aware of the serious
17 ness of the violation for which he has pled guilty and stands
18 convicted of and for which he awaits sentence today. The
19 violation is of sufficient seriousness that Congress has
20 seen fit, in the intervening time, to increase the punishment
21 substantially for violation, from what it was at the time of
22 the offense when he committed it. I would call to the court's
23 attention that any custodial sentence that he may receive
24 today, in 1985, would be subject to much severer guidelines
25 imposed by the Parole Board from those that were in force in

1980, at the time the violation was committed, and I would ask the court to please consider that. We have examined the presentence that has been prepared and it's very extensive, very accurate. As Your Honor knows, from an examination of that presentence, my client has no significant record and that there's been almost five years have passed, from the time of the commission of the offense until today. And that five years has shown that he is not a danger to society or a danger to himself. This case, as Your Honor knows, has had a unique history. The United States originally had jurisdiction of this case and this man had entered into a plea agreement with the United States. And as part of that plea agreement, he had, early on, back in 1980, admitted his guilt of the offense charged. For reasons unknown to my client, for reasons unknown to me, the parties representing the United States at that time -- who, of course, are not the United States Attorney that's before the court today -- saw fit to relinquish that jurisdiction and to send this man's case over to the state courts in Mississippi, where Mr. Bud Holmes, at that time, was the District Attorney. There were three people that, in marijuana traffic, would be called "mules," strong backs. Back in 1980 and 1981, the United States, forthwith, prosecuted those "mules" and sent them to the penitentiary. Back in 1980 and 1981, the United States took the distributor, one of the key men in the operation,

1 and saw fit to place him on probation because of his coopera-
2 tion against the "mules." One of the interesting aspects of
3 the history of this case, Your Honor, is that there were
4 three people that were treated differently from the head
5 distributor and treated differently from the "mules." One of
6 them is my client, who happens to be the son of a very
7 wealthy man. One of them was the head of the organization,
8 who happened to be a very experienced importer of controlled
9 substances. And one of them happened to be my client's
10 partner in the airport, who Your Honor sentenced yesterday,
11 Mr. Royals. Neither the United States nor the State of
12 Mississippi saw fit, back in 1980 or 1981, to investigate
13 Mr. Royals. Mr. Royals, Your Honor, has a history, a long
14 history, of close association with and the personal pilot of
15 Bud Holmes, who, at that time, was the District Attorney of
16 Forrest County. My client's case and that of the head of the
17 organization were sent to state court. The head of the
18 organization, Your Honor, was placed under a nominal bond
19 and he jumped bond. He was apprehended, brought back before
20 the states of Mississippi, placed under a nominal bond a
21 second time and jumped bond; was apprehended, brought back
22 before the state courts of Mississippi, placed under a
23 nominal bond a third time and jumped bond. He was appre-
24 hended in various jurisdictions, including Florida and Texas,
25 where the then District Attorney of Forrest County, Mississippi

1 Bud Holmes, somehow or other failed to process the necessary
2 paper work to bring him back to Mississippi, resulting in his
3 being released. So far as I know today, he is at large; he
4 is either dead or at large. He has never been brought before
5 any court, state or federal, for his role in these proceedings.
6

7 THE COURT: I assume you refer to Mr. Watkins?

8 MR. RESS: Yes, sir; Your Honor -- who was
9 ultimately indicted, along with my client, in federal court
10 this year. My client's family was leaned on for money, both
11 from the state court direction and from the federal court
12 direction. For the last five to -- five years -- and I in
13 no way diminish the seriousness of the offense -- but for
14 the last five years, my client and his family have been a
15 victim of the Criminal Justice System of the United States
16 and of the State of Mississippi. My client entered into a
17 plea bargain with the State of Mississippi four years ago.
18 That plea bargain was that he would testify against Mr.
19 Watkins; that he would plead guilty -- which he did, four
20 years ago; that he would receive a five-year probationary
21 sentence and a five thousand dollar fine. That plea bargain
22 remained in force until -- I believe it was April of this
23 year; March or April. I'm not real certain of my date. I
24 am certain of this: That plea bargain remained in force
25 until Mr. Royals was indicted, at which time it became rather

1 public knowledge that my client was cooperating with the
2 prosecuting authorities of the United States. I cannot
3 stand here and tell the court the motives for which it was
4 rejected. But I can tell the court the chronological order
5 of events. Within two to three weeks after the Royals
6 indictment, this plea bargain, that had been in effect for
7 four years, was rejected by the court and the District
8 Attorney of Forrest County and the case was brought onto the
9 active list and set for trial.

10 THE COURT: What's the present status of the case?

11 MR. HESS: My client entered a plea of guilty
12 Monday, Your Honor. My client, in open court, was sentenced
13 to a three-year custody sentence in Mississippi; to a five
14 thousand dollar fine; and to the payment of costs of court,
15 which will approximate two thousand dollars. After the open-
16 court proceeding, my client, the court and the District Attorney
17 of Forrest County had an in-camera session where certain
18 matters were put on the record and they are fairly well
19 reflected in a letter that we wrote to the District Attorney
20 and delivered to him before the entry of plea in this matter.
21 And with the court's permission, I'd like to present this to
22 the court as an exhibit.

23 THE COURT: All right.

24 MR. HESS: I would suggest that it may or may not
25 be appropriate to have it sealed, so long as there are other

1 proceedings developing out of this; whatever is the court's
2 pleasure.

3 THE COURT: All right.

4 MR. HESS: May it please the court, I'm in one of
5 the most unique positions I've ever been in, in my twenty-
6 three years of practicing law. My client was indicted by
7 the United States, at my request. My client entered a plea
8 of guilty to the charge, on my advice. And I'm in the posi-
9 tion of asking the court to give him some custody sentence;
10 hopefully, minimal but some custody sentence. I call to the
11 court's attention again, as I said in the beginning, we
12 realize the seriousness of his transgression. However, I
13 believe his recent history of assistance to the United States,
14 not only in the investigation of the marijuana matter but in
15 the investigation of matters of far more importance. As
16 serious as the marijuana matter is, I submit to the court
17 it does not arise to the level of the questions of public
18 integrity, at the state level and at the federal level, that
19 is being investigated, very actively, at this moment in the
20 Southern District of Mississippi. I think my client has, by
21 his conduct in recent years, shown himself not only not to
22 be a threat to society but to be a rehabilitated citizen who
23 is contributing, in a very positive manner, to law and order
24 in our part of the country. And I thank you for this . . .
25 opportunity.

9
1 THE COURT: All right, Mr. Hess, I'm not sure that
2 I fully comprehend precisely what is in this letter and I
3 think it may be advisable for us to confer in chambers and
4 perhaps have you explain it --

5 MR. HESS: Fine, Judge.

6 THE COURT: -- to me, prior to actually imposing
7 sentence. Mr. Weingarten, does the Government have any
8 position to state?

9 MR. WEINGARTEN: We have comments as to
10 sentencing, Your Honor. We've been provided with a copy of
11 the letter. Perhaps we should discuss the letter and then
12 come back?

13 THE COURT: All right. I just wanted to know
14 whether you have any. All right; I'll see counsel in chambers
15 briefly.

16 (Reporter's Note: Proceedings were recessed at 9:12
17 a.m.; then, proceedings were resumed at 9:25 a.m.)

18 THE COURT: Be seated, please. Mr. Weingarten,
19 you have a position to state for the Government?

20 MR. WEINGARTEN: A few words, Your Honor; thank
21 you. Your Honor, our view of this case is heavily influenced
22 by the history of the case. And the history of the case, I
23 think, has been fairly described by Mr. Hess. I would like
24 to clarify one point. Mr. Fairchild did enter into a plea
25 agreement with the United States, back in 1980, wherein he

1 was obliged to cooperate and, in return, the United States
2 represented that it would accept the plea of guilty and
3 recommend probation. That plea agreement never came to
4 fruition, for a number of reasons. Apparently, there was a
5 misunderstanding between Mr. Fairchild and the United States
6 as to the extent of the cooperation that was required under
7 the agreement. It was the belief of the United States that
8 Mr. Fairchild would aggressively go out and make cases and
9 help solve any drug-related problems that might exist at the
10 Hattiesburg Airport. I believe it was Mr. Fairchild's under-
11 standing that he would simply have to testify about his own
12 activities. Thereupon, there was the difference of opinion;
13 the United States viewed the plea agreement breached. Mr.
14 Fairchild did acknowledge his own responsibility for the
15 drug-related activities, soon after the agreement was
16 reached. The United States did allow Forrest County to pick
17 up the prosecution, in mid-1981, and I should say, for the
18 record, that was consistent with the Department of Justice's
19 policy, at that time and presently, to encourage local law
20 enforcement jurisdictions to take cases that they can prose-
21 cute themselves. Now, for purposes of the Justice Depart-
22 ment that has been supervising the investigation in Hatties-
23 burg, I think the operative time came in the fall of 1985,
24 when we first asked -- or subpoenaed Drew Fairchild to the
25 grand jury. It was our belief, then, that he was completely

1 truthful in his testimony and it is our belief that he has
2 continued to be completely truthful and completely coopera-
3 tive in our efforts with him, and we've had extensive
4 dealings with Mr. Fairchild from that moment forward. It,
5 nevertheless, is true that this case is -- does have a
6 unique history. I've often thought that it's worth about a
7 seventy-page LAW REVIEW article, just to follow its way from
8 the federal system to the state system to the federal system
9 to the state system. And I agree with Mr. Hess, it can't
10 have been an easy five years for Mr. Fairchild. Now, Mr.
11 Fairchild, the man; he appears to us to be a nice man; he's
12 been helpful. One of the nice points of this case is that
13 he appears to have had a complete reconciliation with his
14 father. I note, for the record, that Mr. Fairchild's father
15 is in court: Mr. Wiley Fairchild. That was not the case
16 prior, I think, to our involvement in the investigation. I
17 believe his cooperation has been complete and I think one of
18 the unusual aspects about his cooperation is, there's been
19 no puffing. Oftentimes, when people are faced with the
20 alternative of cooperating or not cooperating, when they
21 want to curry favor with the federal government, they make
22 slavish efforts to build up the quality of their evidence
23 to the point of not being truthful. We've never had that
24 experience with Mr. Fairchild. The value of his cooperation;
25 well, obviously, the court knows he testified in the Rovals

1 case. And, of course, we have been interested in the possi-
2 ble manipulation of his case, as it worked its way through
3 the Criminal Justice System. And to that end, he's been an
4 important witness; he would have been an important witness
5 in the Government's prosecution of Mr. Holmes, had not that
6 case terminated with a guilty plea. Nothing that I say, of
7 course, mitigates Mr. Fairchild's criminal activity. And
8 it's obviously a case that what Mr. Fairchild did can't be
9 tolerated or winked at. There is absolutely no doubt in our
10 minds that there was a big effort underway in Hattiesburg in
11 1980, to make the Hattiesburg Airport the center of smuggling.
12 And Drew Fairchild was right smack in the middle of that
13 effort. There's no doubt about that. We ask that the
14 sentence imposed by the court both underscore that the law
15 and the Justice Department and the courts will not tolerate
16 such criminal conduct and, also, leave him in a position
17 where he can soon come back, make up for his misdeeds and
18 resume his life.

19 THE COURT: All right. We will file this letter,
20 dated July 8, 1985, by Mr. Gunn, addressed to The Honorable
21 Glenn White, District Attorney For Forrest County,
22 Mississippi, in the record. It will not be under seal. Mr.
23 Fairchild?

24 (Reporter's Note: The defendant stood before the bar.)

25 THE COURT: Do you have anything you personally

1 want to say, prior to imposition of sentence in this case?

2 THE DEFENDANT: Yes, sir. I'd like to say I'm
3 very sorry for what has happened. I'm very sorry for my
4 family and, especially, for my father, who is now seventy-
5 three years of age. This has caused him a great deal of
6 harm and damage to his reputation, which he does not deserve.
7 And I'm extremely sorry for that. And that's all I have to
8 say, Your Honor.

9 THE COURT: All right. Well, we need to start,
10 Mr. Fairchild, with the undisputed fact that you are guilty
11 of conspiracy to import marijuana into the Hattiesburg,
12 Mississippi, Airport, --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- a very serious offense, then; and,
15 as your counsel has pointed out, punishment for that offense
16 has even been increased, since the date of this offense. We,
17 second, must consider the fact that you are a mature adult
18 and were, at the time. You knew exactly what you were doing
19 and you did it for the money.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Had this first operation been success-
22 ful, I have no doubt that it would have been a continuing
23 conspiracy and that Hattiesburg would have become the "Drug
24 Capital of The South." It is a very serious offense and
25 there can be no question about that. We must also acknowledge

1 that there has been a long delay in the prosecution of this
2 case and that you have had a sentence of some sort, apparent
3 ly, pending for pretty close to five years.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I don't necessarily subscribe to the
6 notion, that your counsel stated, that you are a victim of
7 the Criminal Justice System; at least, not in the sense that
8 I understood counsel's remarks. I do confess that the
9 activities of the Mississippi authorities, in your case, are
10 virtually inexplicable. Since I am not involved with the
11 Mississippi authorities and have no control over them, I'll
12 let that statement stand without further amplification. Most
13 important, I think, is the fact that you, early on, admitted
14 your guilt in this case; and, early on, expressed a willing-
15 ness to cooperate with the Government. And you have ex-
16 pressed, on more than one occasion, your remorse for having
17 committed the offense. Those are positive factors in your
18 favor. And of course, I have personally observed your
19 cooperation at the Royals trial. And I did closely
20 observe you, during the course of that trial, Mr. Fairchild.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I would concur with what Mr.
23 Weingarten said; I think your testimony was straightforward,
24 factual; and you testified, to the best of your ability,
25 without exaggeration or anything else. And in the areas

1 where you were unable to be positive or you were not certain
2 it came out that you were not certain of some facts that I'm
3 sure the Government, for example, would have been happy, had
4 you been able to be more certain.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In any event, you did cooperate. You
7 have cooperated, not only in that trial but in other activi-
8 ties. And I certainly must acknowledge that and must be
9 influenced, in the imposition of sentence, by your willing,
10 truthful cooperation --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- with the Government. I think that
13 it may be encouraging, if you can get your life put together;
14 have a reconciliation with your father. Perhaps some good
15 might come out of all of this. It is, however, even con-
16 sidering all of these circumstances, the opinion of this
17 court that the offense which you have committed mandates a
18 term of custody, of incarceration. And in your case, the
19 case of Redditt "Drew" Fairchild, it is adjudged, Mr. Fair-
20 child, that you are hereby committed to the custody of the
21 Attorney General, or his authorized representative, for
22 incarceration for a term of three years, on condition that
23 you be confined in a jail-type or attreatment-type institu-
24 tion for a period of six months; the execution of the remain-
25 der of the sentence of imprisonment is hereby suspended --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- and you are placed on probation for
3 a period of two and a half years, to commence upon your
4 release from incarceration. And the terms and conditions of
5 your probation will be that you comply with all local, state
6 and federal laws; that you comply with the rules and regula-
7 tions of the probation office.

8 THE DEFENDANT: Yes, sir.

9 MR. HESS: May he be allowed to turn himself in,
10 Your Honor?

11 THE COURT: Yes, you are eligible for self-
12 surrender; and I will authorize that, if you are willing to
13 do that, Mr. Fairchild.

14 THE DEFENDANT: Yes, sir.

15 MR. HESS: Should I coordinate that through Mr.
16 Sibille, Your Honor?

17 THE COURT: Mr. Sibille will coordinate that with
18 you right now.

19 MR. HESS: Thank you.

20 THE DEFENDANT: Thank you, Your Honor.

21 (Reporter's Note: Documents were duly signed by the
22 parties.)

23 THE COURT: All right; you have that all
24 straightened out, Mr. Sibille?

25 THE PROBATION OFFICER: Yes, sir; thank you.

1 THE COURT: All right, gentlemen; court will be
2 in recess.

3 (Reporter's Note: Proceedings were concluded at
4 10:00 A.M.)

CERTIFICATE

STATE OF LOUISIANA:

PARISH OF EAST BATON ROUGE:

I hereby certify that the above and foregoing is a true and correct transcript, to the best of my knowledge and ability, from the record of the proceedings in this matter heard before The Honorable John V. Parker, Chief Judge, on Thursday, July 11, 1985.

Baton Rouge, Louisiana, this 7th day of January, 1986.

Helen Bazzell
HELEN BAZZELL, Official Court Reporter
United States District Court
Middle District of Louisiana
707 Florida Street, Room 221
Baton Rouge, LA 70801

I certify transcript fees and format
comply with those prescribed by Court
and Judicial Conference of the U.S.

Helen Bazzell
HELEN BAZZELL, Official Court Reporter
United States District Court
Middle District of Louisiana

STYLE OF CASE: CRIMINAL ACTION NO. 85-00012(L)
USA
vs.
WALTER L. NIXON, JR.

DIVISION: Hattiesburg 10

APPEARANCES:
FOR PLAINTIFF:

Reid Weingarten
Jan Little
Public Integrity Section
Criminal Division
U. S. Department of Justice
P. O. Box 50168, F. St. Station
Washington, D. D. 20004-0168

FOR DEFENDANT:

Michael S. Faver
Herbert V. Lawson
FAWER, BRIAN, HARDY, ZATZKIS
700 Camp St.
New Orleans, LA 70130

JURY TRIAL:	1-20:	3.	1-30:	7.
	1-21:	6.5	1-31:	7.
	1-22:	6.5	2-3:	6.
	1-23:	7.5	2-4:	6.
	1-24:	6.5	2-5:	6.
	1-25:	4.5	2-6:	6.5
	1-27:	.5	2-7:	6.5
	1-28:	7.	2-8:	15.
	1-29:	6.5	2-9:	8.5

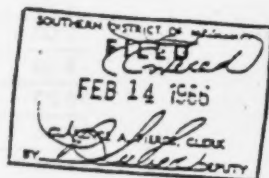
TOTAL: 117 hours

PLACE OF HOLDING COURT: Hattiesburg, Miss.
JUDGE PRESIDING : Judge James M. Meredith
COURT REPORTER : Dave Scott

DATES : January 20-25; 27-31, 1986 and
February 3-9, 1986

ACTION TAKEN:

1-20: In limine motions (courtroom deputy not present)
1-21: thru
1-25: Jury selection
1-27: Jury sworn in. 24 hour continuance due to Reid Wartengarten sick with flu.
1-28: Opening remarks
2-4: Govt rested; deft's motion for acquittal-DENIED
2-7: Deft rested. No rebuttal from govt.; deft's motion for acquittal-DENIED
2-8: Closing statements. 3:57 PM - 11:45 PM, jury deliberating
2-9: Alternate jurors excused. Jury deliberated until 7:50 PM. Verdict in court at 7:52 PM. Counts: I & II-NOT GUILTY; Counts III & IV-GUILTY. SENTENCING SET 3-31-86 AT 10:00 A.M., IN HATTIESBURG, MISS. Deft. to remain P/R.



Zola Haralson, Courtroom Deputy

TUESDAY

JANUARY 1986						
S	M	T	W	T	F	S
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
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MARCH 1986						
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FEB. 1986

-APPOINTMENTS-

7:00 A.M.

7:30

8:00

8:30

9:00

9:30

10:00

10:30

11:00

11:30

12:00

12:30 P.M.

1:00

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2:00

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4:30

5:00

5:30

6:00

10:00 note to Gary
 7:40 note to Gary
 7:30 note to Gary
 7:20 note to Gary
 5:40 note to Gary
 5:30 note to Gary
 5:00 note to Gary

Judge Meredith,

2-8-86

5

Billie Oye

We would like to hear Defendant's Exhibit #32. Is it permitted?

② 7:20

2-8-83

Lillie Ogden

Things look hopeless at this time
If there is any suggestion that
can be legally made we would
welcome it.

7:30 PM

Memorandum of the Jury

You may stop and eat and
continued deliberating. Or you may
Retire for the night and Return Tomorrow
at 9:00 AM. Let us know your decision

J. H. Messitt

Lillie Ogden 2-8-26

We have decided to stay on ^{7:40}
try again but to come to
a better understanding

Supper is in order

7

2-8-86

10:00 PM

Members of the Jury,

Would you like to retire for the night
and return tomorrow to deliberate or would you
like to continue with your deliberations -
Please advise

J. H. Meredith

Billie Dye 2-8-86

10:03

Deliberate longer

11:45 PM

Ladies & Gentlemen of the Jury,
You are excused until 10:00 AM
Tomorrow to continue your deliberations
J. Hancock

2-7-86

The jury started

at approximately

9:45 AM.

J. Hall
U.S. Marshal

Billie Dyer

11:35

2-9-86

Mr. Shetty Davis is sick
with arthritis on says he
has stayed up as long as he
can stand it

2-7-56

12:05

Have you reached a
unanimous Verdict on any
of the counts? Please
Respond but do not give me
the count or the Verdict

J H Merritt

2-9-96

12.10

the house that needed a window
needed to be on any count.

Billie Dyer

2.9.85

3.45

the law reached a verdict
unanimously on one count

Dead locks on all the other

Billie A. Dyer

Members of the Jury

2-9-86
3:55

So far so good - Keep deliberating
until you have completed
all counts

J. H. Meredith

2-7-86 14:50

the have agreed unanimously
on another count

= Billie Dyes

Good - Keep del Berating

J. H. Meredith

2-9-86

5:55

The jurors have agreed on a verdict
Count unanimously

Billie Dyer

Good- Keep up the

good work & finish
the last one

J. H. Mummitt

2-9-86

7:45

The jury has voted unanimously
on the last count

Billie Dyess

4. In November 1984, I was at the Federal Building in Jackson with Mr. Fairchild while Mr. Fairchild's attorney, Harry Hess of Mobile, Alabama, met with federal prosecutor Reid Weingarten concerning a possible plea agreement on a two-count federal indictment against Mr. Fairchild that had been returned in September 1984. Mr. Hess advised Mr. Fairchild and me that Mr. Weingarten was willing to dismiss the perjury count of the indictment and accept a plea of guilty to a charge of paying an illegal gratuity to Judge Nixon. Mr. Hess reported that Mr. Weingarten promised that the government would not seek any incarceration of Mr. Fairchild. Mr. Hess also reported that Mr. Weingarten stated that he would drop the gratuity charge if it turned out that there was no connection between the prosecution of Drew Fairchild on drug charges and Judge Nixon's investment in oil and gas properties. Mr. Hess reported that Mr. Weingarten was not willing to put the last statement -- that he would drop the gratuity charges against Mr. Fairchild if he became convinced there was no connection between Drew's case and Judge Nixon's investment -- in the plea agreement letter.

5. In meetings with Mr. Fairchild and me in early 1985, Mr. Weingarten promised to do what he could to help Mr. Fairchild's son, Drew.

6. In the spring of 1985, it was reported that County Judge Dickie McKenzie, before whom Drew Fairchild's prosecution was pending, had stated that he would sentence Drew Fairchild to five years in prison on the pending drug charges. I immediately

brought Drew Fairchild to Mr. Hess's office, and Mr. Hess contacted Reid Weingarten by telephone to try to make a better deal for Drew. It is my understanding that during that conversation Mr. Weingarten agreed to prosecute Drew Fairchild in a federal proceeding on the drug charges to head off the state prosecution. I also understood that Mr. Weingarten agreed to intercede with the then-District Attorney in Forrest County, Glenn White, to seek an agreement that the state authorities would accept the time served on federal charges as full satisfaction of any state charges against Drew Fairchild.

7. I understood that Mr. Weingarten did reach an agreement with state authorities to have any federal prison time satisfy the state authorities, and that he wrote a letter to the state authorities to assist Drew Fairchild in the state prosecution.

8. In the course of my conversations with Mr. Weingarten, I mentioned that, on behalf of Mr. Fairchild, I and several others had organized a telephone survey of 720 residents of the 11 counties from which jurors are drawn for juries in federal trials in Mattiesburg. The survey was designed to identify the personal characteristics of those individuals who would be most inclined to support either the government or Mr. Fairchild, had Mr. Fairchild's case had gone to trial.

9. At Mr. Fairchild's request, I made the results and methodology of that survey available to Mr. Weingarten before the

trial of Judge Nixon, and Mr. Weingarten reviewed those materials.

10. Immediately before Judge Nixon's trial, and with Mr. Fairchild's approval, I assisted Mr. Weingarten in researching the backgrounds of some potential jurors for that trial. To help with this effort, I went down to the Federal Building in Hattiesburg and reviewed the list of potential jurors, providing to Mr. Weingarten any information I knew about the potential jurors and the areas where they lived. I also made several telephone calls to friends and acquaintances to seek further background information on the potential jurors, and conveyed that information to Mr. Weingarten.

11. On a Saturday or Sunday morning during the trial, I picked up Mr. Weingarten at the Howard Johnson's Motel in Hattiesburg and drove him to the offices of Fairchild Construction Company. At a meeting with Mr. Fairchild, Mr. Weingarten then reviewed with Mr. Fairchild the presentation to be made by Mr. Fairchild as a government witness during the trial. During this meeting, Mr. Weingarten reviewed the points he wanted to emphasize in Mr. Fairchild's testimony, and told Mr. Fairchild that he did not want to get into other matters. Based on Mr. Weingarten's notes, I wrote down during that meeting a list of questions and answers that would be covered during Mr. Fairchild's testimony and those were reviewed by all three of us -- Mr. Weingarten, Mr. Fairchild and myself. I then had that list of questions and answers typed up so Mr. Fairchild could

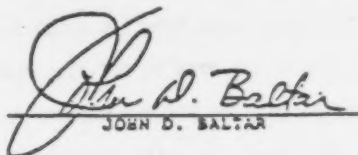
study them before his appearance as a witness. Mr. Weingarten requested that Mr. Fairchild study the information in Attachment 1 before appearing as a witness. I observed Mr. Fairchild studying those materials, including while he waited in the jury room at the federal courthouse on the day he testified in Judge Nixon's trial. That material is attached to this Declaration as Attachment 1.

12. After Judge Nixon's trial was concluded, Mr. Fairchild asked me to contact Mr. Weingarten to ask if Mr. Weingarten would assist in an application by Mr. Fairchild for a presidential pardon. I reached Mr. Weingarten by telephone at his office in Washington and made that request. Mr. Weingarten replied that he would be willing to help Mr. Fairchild in any way he could, but would not do so until the Judge Nixon matter was completely concluded.

I declare under penalty of perjury that the foregoing is true and correct.

DATE:

3/4/88


JOHN D. BALTAR

RELATIONSHIP WITH DREN

RELATION WITH CARROLL

RELATIONSHIP WITH BUD

DREN'S CASE:

THE BUST

READ IN PAPER, NOT HAPPY THAT DOPE WAS BEING BOUGHT INTO MATTHEWSBURG. LATER FOUND OUT THAT DREN HAD BEEN INVOLVED AND WAS VERY DISCUSTED WITH HIM. PREVIOUSLY HAD NOT GOTTEN ALONG WITH DREN BUT HE IS MY SON AND I DID NOT WANT HIM TO GO TO PRISON. DREN TOLD ME THAT HE AND BILL PORTER WAS GOING TO SEE GEORGE PHILLIPS. DREN LATER SHOWED ME THE PAPERS OF HIS PLEA BARGIN. \$2,500.00 GIVEN TO BILL PORTER.

I GOT A TELEPHONE CALL FROM BUD ABOUT 3:00 ONE NIGHT, THAT DREN HAD BEEN INDICTED AND TO GET DREN TO GET BILL PORTER, CARROLL INGRAM OR WHO AND HE WOULD RELEASE DREN ON HIS OWN RECOGNIZANCE. \$7,500.00 GIVEN TO BILL PORTER AND HE SAID THAT WOULD TAKE CARE OF EVERYTHING.

BOB ROYALS CAME AND ASKED ME TO GET OFF MY MONEY. MADE ME REAL MAD. I WAS ANGERED OVER AN ACCUMULATION OF DELAYS AND PEOPLE TRYING TO BLACKMAIL ME. I TRIED TO CALL CARROLL TO GET THE JUDGE UP HERE AND WAS UNABLE TO GET CARROLL. I CALLED THE JUDGE DIRECT AND TOLD HIM I WANTED TO DISCUSS SOMETHING WITH HIM BUT NOT OVER THE PHONE.

WHY DID I CALL NIXON?

BECAUSE I THOUGHT HE OWED ME A FAVOR. WHEN THE JUDGE HAD COME BY TO THANK ME FOR PUTTING HIM IN THE OIL DEAL. THE JUDGE SAID "WILEY, IF I CAN EVER HELP YOU, I WILL. IF I CAN'T, I WILL TELL YOU." I CALLED HIM AND ASKED HIM TO COME BY AND BID.

HOW LONG WERE THE OIL PAPERS BACKDATED?
3 YEAR EXACTLY

WERE YOU PROSECUTED BY THE JUSTICE DEPARTMENT?
YES



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(Note: This transcript will consist only of the pertinent parts of the tape recorded conversation).

R. L. JARVIS: My name is ROBERT L. JARVIS, JR. The following is a conversation I'll be having with WILEY FAIRCHILD on April the 18th, 1984, at the office of W. R. FAIRCHILD CONSTRUCTION COMPANY, LIMITED, which, of which WILEY FAIRCHILD is a general partner. That office is located on Highway 49 North in Hattiesburg, Mississippi.

The time is approximately 2:48 PM.

It's approximately 3:25. I've just arrived at FAIRCHILD's office, fixing to go in his private door.

Hey, MIKE.

MIKE: Hello.

FAIRCHILD: Come in. Come in.

LYNN: Hey (unintelligible).

JARVIS: Hey, LYNN.

FAIRCHILD: Okay, we'll ah (unintelligible). That's all right. (Unintelligible)

JARVIS: I don't know if MARGARET told you that I'd been contacted by some FBI Agents that want to talk to me about something-

FAIRCHILD: Yeah.

JARVIS: What's going on?

FAIRCHILD: It's that Judge NIXON stuff. Ain't nothing to it. Goddamn, it's all on a tape. We've got the notes in there. He bought it-

JARVIS: Okay-

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FAIRCHILD: Everything is legal.

JARVIS: Okay. Well, you think everything's, everything is-

FAIRCHILD: Yeah-

JARVIS: In its proper place-

FAIRCHILD: Yeah, yeah, and it had nothing to do- They think because ah- They think because- What happened, CARROLL INGRAM and BILL PORTER and BUD HOLMES led me and DREW down Memory Lane or some goddamn blind alley and got him to plead guilty up there. You know about that.

JARVIS: Uh-huh.

FAIRCHILD: And ah then I don't know what happened. I know I didn't do anything. I didn't ask you to do any damn thing. I didn't talk to nobody about doing any damn thing. The next damn thing we knew he was indicted down here for the same thing, see. And this thing up there was ah, was for ah, was for ah fifteen thousand dollars, and ah, and five years suspended see. And ah this deal that I actually made, and ah-

JARVIS: Well what got them fired up all of a sudden about this after all this time?

FAIRCHILD: Ah, I made a damn remark about- They still trying to, were trying to- Well the day before BUD went out, just like you're going out of office tomorrow night-

JARVIS: Uh-huh-

FAIRCHILD: He called DREW and said I'm gonna (unintelligible), and I wanna carry the agreement we had outside. I talked with BILL PORTER the day he got drowned about it. No, he said BILL PORTER told me he

wanted to get this thing, wanted us to live up to that agreement and get it over with, and so, and ah DREW said what was the agreement. That was just about this time of day. He said well five thousand dollars, my fine, or five thousand, five thousand dollars fine, five years unsupervised probation. And ah he says well I never heard of that, and he called me, and I called CARROLL. CARROLL says all I know- He's by this morning, asked would I stand in with his attorney, and I said well goddamn. The agreement was it'd go to the file. And, and then ah-

JARVIS:

Well, they committed it to the file, didn't they. Who was the one that actually brought it back out?

FAIRCHILD:

I don't know what happened. And ah so I said well CARROLL, I'm capable of going to MARVIN RUBIN with this whole goddamn thing. It's just blackmail. And I says I never been blackmailed, and I'm too old to start. And BILL PORTER said that thing going to the file. It's gonna stay there. If it comes out, we'll get it in federal court. So I called WALLACE GUNN, and he said yeah there are some that you can- In a case like this you can get it back in federal court. And ah he said I'm no criminal lawyer, WILEY. You need to get some- Who is a good criminal lawyer here beside ZACK (phonetic), JIMMY DUKES? It's not (unintelligible)-

JARVIS:

I don't- See, the problem you run into there is, is JIMMY DUKES and BUD HOLMES have the criminal practice sewed up.

FAIRCHILD:

No, there's another good criminal lawyer here.

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JARVIS: I'll, I'll see if I can find out for you who, who would be good at that-

FAIRCHILD: Well, anyway, I know it. I know it, and so, so ah I told ah, I told ah, whoever, WALLACE told me who he was. So I told WALLACE the whole thing what I was threatening to do, see, 'cause BOB ROYAL was out there. They didn't indict him. It was blackmail from the word go.

JARVIS: Let me ask you a question, you do that-

FAIRCHILD: Huh?

JARVIS: If, if you went out there, that newspaper thing, aren't you a little bit worried about what HOLMES or CARROLL might end up doing? They may wanna play hardball on this thing.

FAIRCHILD: Well, how?

JARVIS: You've got two attorneys, who, if you bring charges like this against them or accusations, they've got a lot to lose, which means that you might be in the hotseat.

FAIRCHILD: Well, ah-

JARVIS: You know-

FAIRCHILD: Well, I'm just gonna tell 'em that DREW wasn't there and that the records that they got up there tell me and that DREW and BOB was in partners. They couldn't possibly ah, ah, ah, ah BOB ROYAL would have to know about it, see, and that ah, and that BUD HOLMES and, and, and, and ah BILL PORTER were the very best of friends, and ah, and that ah, and that it's my opinion, I believe he was indicted, but why, because, you know, and it's- I, I figure it was blackmail from the word go. And old, old BOB ROYAL sat

right there and, and passed the thing on from BILL PORTER, and I said now BOB, I've got your message, but I said not no, but hell no. I said hell, if he have to serve time, he'll just have to serve. And ah so, and I told them FBI men that, and ah, so, but anyway this CARL KEPPER (phonetic), ain't there a CARL KEPPER? No, he's the one that-

JARVIS: CARL KEPPER. -There's, there's-

FAIRCHILD: No, he's the one that committed suicide.

JARVIS: There's a, Mrs. KEPPER that's ah-

FAIRCHILD: No, that's another one-

JARVIS: That's a lawyer here-

FAIRCHILD: But anyway, let me tell you. This is all happened one evening, see. So I told WALLACE what I was gonna do, that I'd just been fucked around enough, and I'd been ah, and ah, that I don't know why that GEORGE PHILLIPS didn't carry out the thing, see, and I don't know why it, why it changed, and ah happened. I didn't know nothing about that, but that- But I says I just will die. I just think it's blackmail, and CARROLL INGRAM is deep into it anybody.

JARVIS: Well, you know that day that the stuff came up on, on Judge NIXON where you had me draw up those assignments in blank.

FAIRCHILD: Yeah.

JARVIS: You remember CARROLL was here that day-

FAIRCHILD: Yeah-

JARVIS: Y'all had just gotten through talking about that. You know one thing, you know we talked

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about this about two years ago when I said we needed to be a little more careful with this stuff-

FAIRCHILD: Yeah-

JARVIS: Ah, you remember SHERRY was here at that time? SHERRY was one of the witnesses on one of those things, if I, if my memory serves me correctly. Now are they going back to all of the former employees?

FAIRCHILD: I don't know, and I don't give a damn. If I'da done somethin', if it'd been a payoff now-

JARVIS: Well, I'm, you know, I'm, you know, what I'm trying to say is if it looks like a payoff, they're gonna, they're gonna investigate it all the way to-

FAIRCHILD: Well-

JARVIS: To the bottom of it-

FAIRCHILD: Well, they sat right there this morning, and they said, well if there's some record of this- Did he get an assignment, did I, and ah, ah, and they told MARGARET the other night, the subpoena, (unintelligible) says yeah. They went out to her house and asked did we write any check look like would been a payoff to BUD HOLMES or GEORGE PHILLIPS and said- (Interruption for telephone call) says no-

(Non-pertinent conversation)

FAIRCHILD: And ah-

JARVIS: Oh-

FAIRCHILD: So WALLACE GUNN said get this lawyer, see.

And I says okay you, you ah call him. And ah so that got on 'bout- So DREW called him and told him what he wanted to do, go down there to get the file and file it the next morning. And ah-

JARVIS: Well, who's been handling DREW's stuff since, since BILL PORTER died?

FAIRCHILD: Nobody. And ah so the next morning I walked in here, and MARK says BUD HOLMES has called for you. I said well if he calls, just tell him I'm not in. He said he wanted to come out and see you. So, and I said well, you'll have to tell him I'm here. Well, hell, about 8:20 he walked in there, and they said BUD HOLMES. I said tell him to come on back.

JARVIS: He came out-here?

FAIRCHILD: Yeah, the next morning.

JARVIS: Well, now, that takes guts.

FAIRCHILD: And ah- Well, now, you're jumping to conclusions.

JARVIS: Yeah, I-

FAIRCHILD: You're just jumping, and it's the wrong way, just ninety, or a hundred and ninety degrees from what ah the truth is. And he had Judge MCKENZIE with him. And they come in and sat down there, and he said well I want you to get in touch with DREW, and ah have him to lay low, play quiet, and ah when he got too (unintelligible), get excited. I can't remember what it said.

JARVIS: Right.

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FAIRCHILD: But I had RODNEY in here. I says now BUD, just what do you recommend- Said just tell him to be quiet. Ain't nobody, just let this thing slide, ain't nobody after DREW's ass. Just be quiet. And I said well that's what I wanna do. Well, I think after this, after that ah- Yep, he told, he said just let it slide, says this media'll get a hold of this thing, and they'll blow it all out of proportion everywhere. And ah so-

JARVIS: Well, did he know about- You said that, that CARROLL had come out here. Did he know about CARROLL coming out here?

FAIRCHILD: No, CARROLL hadn't come out here.

JARVIS: I thought you said just a minute ago that he had.

FAIRCHILD: No, I called CARROLL that evening before. CARROLL says he wants me to come up there and stay with DREW while he's being sentenced, see. Well, what it was, BUD and CARROLL had just got together, see. And he was gonna call DREW, and they were gonna get it all cocked up, see. And ah, and I would pay-off 'fore it'd go through-

JARVIS: So they were both catching you in the middle between 'em.

FAIRCHILD: Yeah. Okay, that stopped, but ah WHITE, not long ago, and ah called one of WALLACE's, was, was gonna be one of LA-WALLACE's law partners.

JARVIS: This is GLEN WHITE, took BUD HOLMES' place?

FAIRCHILD: Yeah.

JARVIS: Okay.

FAIRCHILD:

Ye called somebody and says ah you need to come down, said you represent DREW, but ah some connection between this lawyer and BILL PORTER some way. He says you need to come down here and file this thing ah for continuance. If it don't, it'll have to come up.

JARVIS:

So, so WHITE's willing to work with you to keep the thing just kinda-

FAIRCHILD:

No, that- I blew my stack then, see.

JARVIS:

Oh, okay-

FAIRCHILD:

And ah, I blew my stack then, and- Well I'd done told CARROLL, and the next, after it's over, I said see, I told you it wasn't a goddamn thing but blackmail. And I said shit, I don't ah, and ah I says five thousand dollar fine, and five years unsupervised ah sentence- I says hell, I had that fixed before through some friend with WILLIAM WINTER, if what I was telling was the truth. And ah, and I had somebody up in Jackson and talking with some people, and another, among other people was ah, was ah Governor ALLAIN about the, about the pardon, see.

JARVIS:

Well, if you've got that, can you just tell CARROLL and HOLMES to take a, take a fly and leap now then, just chunk them out the window?

FAIRCHILD:

Well, yeah, yeah, yeah. It's still they're trying to blackmail. Oh, yeah, I left out the main thing. But when I called ah DREW back and he called CARROLL and asked him about ah that gettin' it in federal court, and he said well DREW, that'll take a lot of research, says I've done a hell of a lot of work on this damn case, says I've never been paid a damn dime. And that's what, you know-

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JARVIS: CARROLL-

FAIRCHILD: It's just a-

JARVIS: CARROLL INGRAM is, you know, he had said somethin' that I talked to NANNY about one time that I didn't tell you. But CARROLL is not your friend. You know that now though-

FAIRCHILD: Oh, hell, I've known it for years.

JARVIS: Okay.

FAIRCHILD: I haven't just now- I've known it for years.

JARVIS: Okay.

FAIRCHILD: Hell, but ah-

JARVIS: Well, see, that's somethin' that, that scared me. When he was here- And remember we did that stuff to Judge NIXON-

FAIRCHILD: Yeah-

JARVIS: See this is what scares the hell out of me is, is that backdating for that year. I don't know how- I hope that's- You know, I don't know what that's got, and I don't wanna know-

FAIRCHILD: Well, ah-

JARVIS: But ah-

FAIRCHILD: We just, we, well-

JARVIS: Do you, are your records okay to-

FAIRCHILD: Well, now, I didn't know about the back-dating.

JARVIS: Yeah, that was, remember when it came back

from CARROLL's office.

FAIRCHILD: Yeah-

JARVIS: That ah, because it all came about DREW's time. Y'all, y'all had me do it back before then. Remember that?

FAIRCHILD: Yeah-

JARVIS: So if any question came up-

FAIRCHILD: Yeah-

JARVIS: 'Cause see, at that time, I didn't know it was going to the judge, and you just had me do 'em in blank, and then you-

FAIRCHILD: But the deal had already been made-

JARVIS: But see- *

FAIRCHILD: We just dated it back to when it was made, see.

JARVIS: Okay, well that, that's what I was trying to figure, you know, not figure out, but make sure- 'Cause I don't want somebody coming in here saying well look at this. 'Cause that's the kind of stuff they're looking for. I, I think CARROLL help, left you hanging out there on that one, and I, you know, that's, that's-

FAIRCHILD: No, CARROLL was the one that ah, CARROLL was the one asked me to put the judge in a deal, see, I think. I don't, I can't remember who it was.

JARVIS: Well, CARROLL was the one that came out here and, 'cause you had me take all the stuff, and CARROLL was the one that kept calling me, telling me the judge wanted his money. And that's one of the reasons why I

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figured that they, that was part of the squeeze too. That's why I tried to talk to you two years ago about it.

FAIRCHILD:

And BOB, that didn't have a damn thing to do with DREW.

JARVIS:

Okay.

FAIRCHILD:

Didn't nothing mention it in there.

JARVIS:

Okay, well that, I was just worried for you.

FAIRCHILD:

No, it, it wasn't nothing- It didn't have a damn thing to do- Was with, the, they, what- We hadn't got our money, and ah the well had been on stream, see. And that's ah not unusual for the damn well to be on stream for a year, see.

JARVIS:

Uh-huh-

FAIRCHILD:

And ah, and ah, but if it'd been a payoff, that'd been one thing.

JARVIS:

Well, see, if they ask me about that, one, you know, if- I'm afraid that this might eventually go, you know, if they find enough stuff, they're gonna take it to a grand jury. And when they put us under oath, one of the things that's gonna come up is that those things were backdated, and that's why I'm sittin' here asking you, what are we, what do we do, and where are we going so we'll all go in the same direction. 'Cause, you know, you know what it looks like. What do you think?

FAIRCHILD:

Well, I didn't know that the damn things were backdated. I didn't know that the damn things were backdated. Who could ah, who could ah-

JARVIS:

Well, see, when it originally came up,

you know, I did the things the date that it was and left 'em on your desk. You sent 'em to CARROLL's office, and then when I, they came back, you had put 'em in my tray. CARROLL sent 'em back here, and I think it was, I assume it was CARROLL that told you they needed to be backdated, 'cause you, that's what you told me to do, put 'em 'bout a year back, and, and we, we redid 'em- 'Cause see, SHERRY witnessed the first one that was the right date, and then when we redid 'em, we went ahead- I took her off and had BILLY sign that witness spot because SHERRY wasn't here then when, when the date was. So that's when you had me just put 'em back in the envelope and take 'em to CARROLL, and I, I forgot 'em until CARROLL started calling, wantin' to know where the judge's money was. So- :

FAIRCHILD:

Well, how would they ever know they was backdated?

JARVIS:

If they contact a bunch of the employees, and they talk to SHERRY as a former employer, she remembers this-

FAIRCHILD:

Well, her name ain't on it.

JARVIS:

She's a former employee though.

FAIRCHILD:

Yeah-

JARVIS:

If, 'cause see, she was here during that time when, when all this was happening. Are she and DAVID still down in New Orleans?

FAIRCHILD:

Uh-huh, yeah.

JARVIS:

They might not find them then.

FAIRCHILD:

Oh, I, I don't think they'll- They think that

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it was a- They're gone. They, they couldn't believe, they didn't think there was no instrument, see, that ah and asked for a copy of it. I said well you go over to the ah, Marion County, and go to Covington County, it's a matter of record up there.

JARVIS:

I don't think we've got a copy of the recorded ones in the files here, 'cause it- You had me take 'em and give 'em to CARROLL, and that's the last I saw 'em. I don't think we ever got a recorded copy of 'em. So I don't think it, I, I think that you can honestly tell 'em that they can look in your files. I don't think they'll find it.

FAIRCHILD:

Yeah, well, we told 'em this, the file, she got the file there and showed 'em where'd been mailing him a check.

JARVIS:

What'd they say?

FAIRCHILD:

Well, they, they said that ah, ah-

JARVIS:

Wait a minute. You may have a problem on that too.

FAIRCHILD:

What?

JARVIS:

Back when I used to work in, with the city down there.

FAIRCHILD:

Yeah.

JARVIS:

I had to report everything that I owned. Do federal judges have to file- I don't know whether it was just-

FAIRCHILD:

Oh, yeah, yeah, they told me, they got it, they went to the (unintelligible). Yeah, they got it. I knew it was, was gonna be reported.

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JARVIS:

But it's not gonna be reported when the instrument says- It's gonna be- See we didn't give it to him till eighty-one, and the instrument's gonna say somewhere- I think eighty. See, that's, that's what scared me to death. Now if they say that, okay, judge, you had it, but you didn't, you didn't report it, and he comes back and says well hell, I didn't get it till eighty-one-

FAIRCHILD:

Well, wait a minute, now what?

JARVIS:

You know the, we, we made the deal- We, we ah conveyed all of the stuff to the judge in eighty-one, but, you know, y'all had me backdate it to eighty.

FAIRCHILD:

Yeah.

JARVIS:

If they look at his 1980 report and it's not on there, that, it's gonna make 'em dig that much deeper. Lord it- See, that's, that was what had me really worried about- 'Cause see, CARROLL was handling all this, it looked like, between you, and all this stuff that he did for you, he's got you hanging out there in the wind. And it scares me. That's what I'm trying to tell you. And that's why I wanted to sit down with you and say look, what, what do you want me to do?

I remember back when I was down in Lake City when they had that big thing come in where they got all those judges and stuff down there. Man, they did their homework before they ever went the first time. They may already know about this stuff.

FAIRCHILD:

No, I tell you how it all come about. It'll ease your pain.

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JARVIS: Okay.

FAIRCHILD: I got ah, I told JOHN BALTER (phonetic), he's a full-time lobbyist up there in the legislature, all about it, see, about the thing and all. He went to GEORGE PHILLIPS, and GEORGE PHILLIPS called the FBI top man there, and he called him, see. And that's, that's the way it come about.

JARVIS: Lord, lord, lord.

FAIRCHILD: And so it's ah- That's the way it come about. But I think when they get in here and find out that that stuff was on record up there and ah (unintelligible) on record up there. But they gonna find that on record back there.

JARVIS: Okay. Well; do they even know where they're looking, or they, or they- Well, I guess they'll look at his report, and it'll be on there, come to think of it-

FAIRCHILD: What kind of report?

JARVIS: If they're looking at the judge-

FAIRCHILD: Yeah-

JARVIS: Well now CARROLL-

FAIRCHILD: Well, there wasn't no intent on our part.

JARVIS: Yeah, but what I'm thinkin' 'bout- CARROLL is real tight with that judge. You don't suppose that was a squeeze play on you there, do you?

FAIRCHILD: No, I, I don't know what to expect out of him.

JARVIS: 'Cause what I'm thinking-

FAIRCHILD: You see, that was all DREW- You, day that this thing- DREW has already confessed.

JARVIS: Uh-huh. That's, that's what has- That's what I don't understand.

FAIRCHILD: Well, that's what- Couldn't have been a payoff there. He done agreed what would recommend.

JARVIS: Well, I'm, I'm wondering if CARROLL and the judge might have put the squeeze on you the way HOLMES and CARROLL are trying to do it now. bid-

FAIRCHILD: Well, I don't-

JARVIS: 'Cause CARROLL and that, CARROLL and Judge NIXON are tight, from what I understand.

FAIRCHILD: Yeah, but ah, I don't, I don't- Well it would, it would get, it would get ah, it would get ah, it would ah- I don't remember telling you to do that-

JARVIS: Yeah-

FAIRCHILD: I remember that ah, there was somethin' wrong with the papers.

JARVIS: Uh-huh-

FAIRCHILD: And that CARROLL wanted 'em.

JARVIS: Yeah. I think CARROLL was the one who, who came up with the idea of backdating 'em-

FAIRCHILD: Yeah-

JARVIS: If, if I remember correctly. But I'm wondering if ~~they~~ just might have used that to put the ~~squeeze~~ on you from another side.



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FAIRCHILD: Well, now-

JARVIS: Did-

FAIRCHILD: ✂ Now Judge NIXON and CARROLL, no., CARROLL, and 'nem, ah CARROLL and ah BUD, yeah.

JARVIS: Well, you suppose the three of them might be involved in it, they may all three be in the same- ...

FAIRCHILD: No, I mean just CARROLL and BUD and PORTER is the one that's involved. See, BUD told me to get PORTER for a lawyer, see.

JARVIS: Uh-huh.

FAIRCHILD: And, and CARROLL was gonna work behind the scenes, see.

JARVIS: What, what I can't figure out though is why in the world CARROLL is doing all the negotiatin' between you and the judge. That, 'cause it seems like the judge and you would just sit down over the table and you just bat, you know, you just bargain and horse trade and, and settle it like that. See, because CARROLL's involved is got my, you know, and then, then the way it's been handled, it's got you- Where it looks, it looks like it was paid as a bribe is what it really looks like.

FAIRCHILD: A bribe for what?

JARVIS: I don't know. See, that's why, that's one of the reasons why I just wanted to sit down with you and bat it around this afternoon. 'Cause they're, they're gonna corral me sooner or later, and if they start asking me, I wanna know what-

FAIRCHILD: I told that, that you, to, to get in touch

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with you.

JARVIS: Okay, 'cause they've been trying to get me, and I've been puttin' 'em off, and puttin' 'em off, and hidin' from-

FAIRCHILD: How long they been trying to get you?

JARVIS: They tried to get me Monday because I called MARGARET, and MARGARET said that you had gone to San Antonio, and you wouldn't be back till late. And then I, then I had hearings yesterday morning. I was over in, in court yesterday. So I was able to stay hidden. The, and then today I've been, been out of the office. ZACK's probably gonna fire me when I get back for being gone this much today.

FAIRCHILD: So-

JARVIS: Well, what, what do you want me to do, you know, when they talk to me, just, what do you want me to do?

FAIRCHILD: Well, I don't know. Now what, what do you think'd be the best? You don't know nothing about the deal.

JARVIS: All I know is that the checks were being cut to the judge, and CARROLL came up with the idea of backdating those things, and I don't know why. And-

FAIRCHILD: Well, do you think you need to tell 'em that before they put you under oath?

JARVIS: Well, I don't know. We're in the situation where I can't advise you as a lawyer. 'Cause I'm right in here in the, in the thick of this with you.

FAIRCHILD: Well, but we ah-

JARVIS: See, it-

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FAIRCHILD: Well, if it comes right down to it, I don't know nothing about it, your, your backdating that thing.

JARVIS: Okay.

FAIRCHILD: If CARROLL told you to, I assume you went ahead and done it, see.

JARVIS: Okay, so you're not gonna bring it up at all then.

FAIRCHILD: No-sir-ree.

JARVIS: Okay.

FAIRCHILD: I'm not gonna bring it up at all.

JARVIS: Okay.

FAIRCHILD: And I don't think that you will. I don't think they'll have no way of-

JARVIS: Okay-

FAIRCHILD: But if his, if his damn reports down there ah show it, well, don't show it, well it'd be an oversight, see-

JARVIS: Okay-

FAIRCHILD: And they, they do that, see.

JARVIS: Okay.

FAIRCHILD: You reckon we better tell CARROLL or what?

JARVIS: I don't know. I don't trust CARROLL as far as I can throw him. I don't know if he might run down there. If, if he's dirty, he may wanna make a deal to sell you to 'em to save his hide. 'Cause see, if he gets, see, if he gets indicted for this, they take away his license to practice law. So not only does he get criminally charged, but he loses

his profession. And that's why- He and BUD HOLMES have got that. And that's, that's why I was telling you that if you go to MARVIN RUBIN- You know, these, they may wanna play hardball, and I'm not talking about just talking.

FAIRCHILD: Well, I'm dumb in some ways, maybe stupid in a few ways, but ah I would ah-

JARVIS: I just want you to be careful.

FAIRCHILD: I would ah be fool enough to not to, to not get into that jam.

JARVIS: Okay-

FAIRCHILD: But now CARROLL, he is not, he is not, he's too involved for this thing for anything to come about, see.

JARVIS: I don't think he could help you. I mean, I don't, I think he'd be too busy covering himself to be able to do you any good.

FAIRCHILD: Oh, hell, yeah. But they were so sure in ah, cock sure in everything, and ah, and ah they, they made a remark, well, you got us into this this morning. I said ah-

JARVIS: BALTER got you into it by opening his mouth or, you know-

FAIRCHILD: I knew he was going to GEORGE, but what I was hoping that they'd come down here and talk to me, and I'd say that ah, that ah BILL PORTER sent BOB ROYAL to me and ah they go talk to BUD, see, and let 'em know that ah, and ah, and I told 'em that this morning, and they just kinda laughed.

JARVIS: They were here this morning?

FAIRCHILD: Oh, yeah.

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JARVIS: (Unintelligible)

FAIRCHILD: Well, they were so, they done talked- This is the third time they talked to me, this morning is.

JARVIS: I tell you what, when I got that phone call Monday and they told me they wanted to talk to me, scared me to death. I don't mind telling you.

FAIRCHILD: And I let 'em have this, this thing. You see what they, what makes, what, what makes the whole thing, see, it's not the fact that ah, that, that, of judge was gonna, being bribed. What, why, what happened, they already had this thing, and I didn't know it till they told me this morning, and that's why it looked suspicious, that DREW was gonna testify a, against three fellows, and ah they already sentenced then three fellows, and they turn around and not do nothing, see. And, and I said well I can understand why, but why he didn't do nothing- Well, I think that CARROLL INGRAM and BUD HOLMES talked to, to, got him to sit on it, see, and ah got him to sit on it.

JARVIS: Well, have you actually paid CARROLL or, or HOLMES anything yet, or-

FAIRCHILD: No, hell, no-

JARVIS: Okay, they're just puttin' the squeeze on you-

FAIRCHILD: Listen, now the other day when this thing happened, the other day, it was just 'fore he went out of office, CARROLL told DREW, said I've done a lot of work on this, and I hadn't been paid a dime, and, and ah that was lettin' him know he was expecting some money then. I give BILL PORTER ten thousand

dollars, and I told 'em about that, see.
And ah-

JARVIS: Well, is he, was, was PORTER working with
CARROLL- Were they working together on
DREW's defense or-

FAIRCHILD: Well, he said that it was in a memorandum
I give to the FBI. They, hell, they ah-
He made a statement that, DREW did, hand-
written statement that ah- Well, somewhere
that ah it's a desk that I don't ah, that
I don't ah tend. I work behind the scene,
see.

JARVIS: Yeah, we see how he works behind the scenes.

FAIRCHILD: And ah, and BILL PORTER, see. 'Course, yeah,
this is all- It's saying something that they
stirred up, and it's something that ah I
actually stirred up myself.

JARVIS: Well, I-

FAIRCHILD: But hell, if I'd been any bribery in it, this
thing, ah, ah, would it been any intent or
any bribery, and it just wasn't no intent of
it, see.

JARVIS: Well, you know, I- That's why I came to you,
just me and you, 'bout two years ago, and I
know I made you mad by bringing it up, but ah,
you know, couple of 'em in the office had
asked me about it.

FAIRCHILD: About what?

JARVIS: About those payments to Judge NIXON. That's,
that's one of the reasons why I came to you
and said we need to keep everything in-house
and quiet. 'Cause I didn't know, and, you
know, you know how rumors get started-

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FAIRCHILD: Yeah-

JARVIS: That's-

FAIRCHILD: Well, well I'm glad you come out then, and I'm glad you're concerned about it, but somehow or another, I'm not.

JARVIS: Okay, everything's okay then?

FAIRCHILD: Yeah.

JARVIS: Okay, 'cause I, like I told- I don't know if MARGARET told you that I called, but I told her I didn't wanna talk to 'em till I had a chance to talk to you and see-

FAIRCHILD: Well, she didn't tell me that-

JARVIS: Well, let me tell you- I called her back and told her not to tell you 'cause I didn't want you worried about 'it-

FAIRCHILD: Yeah-

JARVIS: Till I could just get a hold of you myself. 'Cause you, you hadn't come in yet from San Antonio. And I, I just been puttin' those folks off till I could talk to you. So you want me to talk to-tonight and just not say anything about that backdating, just be quiet, huh?

FAIRCHILD: Yeah, just say, and don't mention that backdating, and ah, but ah-

JARVIS: 'Cause I think that's your weak spot right there. Well, let me get back to the office so I can- Hopefully I can sneak in the back door, and ZACK'll think I been over to the courthouse all this time-

FAIRCHILD: What ah, is- They wanna talk to you tonight?

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JARVIS: They've been calling over there at the office two or three times. You know, I, I was gone both yesterday and today.

FAIRCHILD: Yeah.

JARVIS: And I come back, and there'd be messages there that they've called, and they're trying to get in touch with me. They wanted to sit down with me, and they said they'd come out there at night. And I got a sneaky suspicion that they're probably gonna show up out there any, any, any night now.

FAIRCHILD: Well, they probably will. They probably will.

JARVIS: Did they ever come to your house, or did they just come down here?

FAIRCHILD: No, they called me and made an appointment. They went to MARGARET's house, see.

JARVIS: Oh, well I'd rather-

FAIRCHILD: First (unintelligible) MARGARET got some ah information for 'em and give to 'em, see.

JARVIS: Okay.

FAIRCHILD: And they just went-

JARVIS: Well, I'd kinda rather they came out to the house, 'cause it's, it's gonna look kinda bad. I haven't been down there a month, and all of a sudden I got them coming in there.

FAIRCHILD: You've got their number, haven't you?

JARVIS: Whose number?

FAIRCHILD: The FBI's number.

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JARVIS: No, I, I, I'll get out of the phone book. Just, I'll just, just call 'em and tell 'em I guess they can come on by and see me. You want me to keep you posted?

FAIRCHILD: Oh, yes, sir-

JARVIS: Okay-

FAIRCHILD: I wanna know what's going on.

JARVIS: Okay. In the meantime, just between me, you, and these four walls, be careful. Now you had asked me about contacting DREW. I don't know if I would. 'Cause if it happened like you said and they, you know- What I'm saying is you said somethin' to BALTER, BALTER goes to GEORGE PHILLIPS, and you, you were trying to get him off your back-;

FAIRCHILD: Uh-huh-

JARVIS: If you say somethin' to DREW- I mean not to DREW, but to CARROLL, you may wanna think about that first. Have you talked to a lawyer at all on this?

FAIRCHILD: Oh, yeah, yeah- No, I've not talked- I want nobody to know about that, that JOHN BALTER went to- I hadn't even told RODNEY. I hadn't told-

JARVIS: Okay-

FAIRCHILD: You, but you're so concerned see, and you're just, you, you thought they went out there and dug all this up themselves.

JARVIS: Well, I thought they had enough, I, I thought they were ready to come here like they did in Lake City-

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FAIRCHILD: Yeah-

JARVIS: I been through it one time, and it scares me.

FAIRCHILD: Well, my conscious is clear, and I ah, old ah Governor WALLER is drawing a damn check that ah, that some stuff that I gave him, and ah, and ah, and (unintelligible) it wasn't no payoff, and, you know- My conscious, hell, they may wind up, do somethin' about it, but ah, but goddammit, I may have violated the law, and, but ah, but the intent wasn't there, and I just don't think there was- I just don't think there's nothing that they can do about it. Ah-

JARVIS: Well, have you, you said you wanted that, but you said something to BALTER to talk to PHILLIPS to get them off your back. Have you thought about just going to 'em and, and seeing if they'll, if they can get them off your back. Of course, you know-

FAIRCHILD: Going to who?

JARVIS: You said the FBI was here. Have you thought about just seeing what they can do to shut CARROLL and BUD HOLMES down? 'Cause if, it's gonna, you know, if- To do that, it's gonna take a grand jury and the rest.

FAIRCHILD: Well, I know it, it's gonna take somethin', and ah-

JARVIS: You thought-

FAIRCHILD: Well, the first time I, they was here, I said if y'all want to get something, I said you oughta be investigatin' how much money that BILL PORTER owed, who was on them notes and, and didn't they have life insurance on 'em. They said well they'd been

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checking into that.

JARVIS: Well, somebody asked me one day if ah, if HOLMES might have had something to do with that. Do you suppose he did?

FAIRCHILD: I'll die believing it. Oh, shit, you don't, you don't dive down there three times and it already dark and mucky water and say well he's not in there, and swim a damn live with your clothes on. No, it's impossible.

JARVIS: Well that's, see that's what scares me, that, you know, if, if any of this leaks out, you- Have you told MARGARET to kinda keep this under her hat? Have they talked to anybody else that you know of?

FAIRCHILD: Um no, no.

JARVIS: Okay.

FAIRCHILD: What ah, if what leaks out?

JARVIS: You, about what's going on that BALTER told them what you had said.

FAIRCHILD: No, she don't know that ah-

JARVIS: Oh, okay, so I'm the only one that knows that.

FAIRCHILD: You're the only-

JARVIS: Okay-

FAIRCHILD: I told the FBI that, see.

JARVIS: Okay. You don't suppose that they'll- Well they, are they gonna keep that kinda in, in their- Who, who was it with the FBI that you talked to? Do you remember who they were?

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FAIRCHILD: Ah-

JARVIS: I'd kinda like to know so I, so I know-

FAIRCHILD: It'll be the same two that I talked to here.

JARVIS: Oh, okay.

FAIRCHILD: It's ah, ah- Had the two names. I've got 'em in the office. I got 'em in this book.

JARVIS: Now is his name WHITE or SPUNNER or-

FAIRCHILD: Ah, SPUNNER-

JARVIS: SPUNNER, okay. Okay. Now I'll know, if they come out, now I'll know if they're the same ones that talked to you or whether, whether they've got some more in here.

FAIRCHILD: You want that to get to, to call 'em?

JARVIS: No. I'll go back to the office and just call 'em and tell 'em to come out after dinner tonight. I might send PAM and the kids off somewhere. 'Cause I know it's gonna scare PAM to death when the FBI comes to the house. Well, let me get back-

FAIRCHILD: Well, ah, I can understand where you are. I was asked to do ah WALLER a favor, see, and I can understand, and ah-

JARVIS: Well the only thing-

FAIRCHILD: And I'm telling you that I was asked, or I was- Well, well I don't remember who, but anyway, I went ahead and done it, and ah if it'd been JOE BLOW or somethin' 'nother, I, I- Very few people know WALLER calls all

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the time, wantin' to get in deals,
see-

JARVIS: Right-

FAIRCHILD: And other people want, and you know
that, see.

JARVIS: Right.

FAIRCHILD: And ah, and they just (unintelligible)
people go in there, and certainly I'd
rather do somethin' for a governor.
I'd rather do somethin' for a judge or
a prosecuting attorney- No, a judge,
period. I'd rather do somethin' for
them than the average fellow. Because
they're the ones that can help you if
you ever need it.

JARVIS: Right.

FAIRCHILD: But what you was, what, what they don't
know, but at that, me and, back at that
time hell, me and DREW wasn't hardly on
speaking terms.

JARVIS: I remember that.

FAIRCHILD: We weren't hardly on speaking terms, and
ah-

JARVIS: That's why it surprised me when, when
CARROLL was here and all this switchin'
and swappin' was going on, and, you know, I-
That's, that's one of the reasons why I was
walking around here just not knowing what
in the hell was going on.

FAIRCHILD: Well, well, I told 'em that, that, that me
and him wasn't on good terms at that time.
Hell, we wasn't. We wasn't even, we wasn't
even visitin', speaking, or nothing else at
that time. And, and I told them when that
plane landed there, I was, I'm still that

damn fellow today that I was, and I ain't changed a bit. If I was a shit ass then, I am today. I haven't changed a bit.

JARVIS: Well then if, if, if we get rid of CARROLL and, and HOLMES, then everything, you got, you got that taken care of up there in Jackson then, right, on the State stuff?

FAIRCHILD: Yeah-

JARVIS: Okay-

FAIRCHILD: Yeah, well-

JARVIS: Okay.

FAIRCHILD: And ah if all- I'm, I'm led to believe- I'm like before, if what I'm saying happens, it would happen, see. And ah, and ah, and it'll be over with, see.

JARVIS: Okay. Well, changing the subject just a minute- Did you get the letter I wrote you by-

FAIRCHILD: Yeah-

JARVIS: Okay. I, I got bad feelings on that CLINTON V. MORGAN thing, and ah I'm gonna speak out, and I shouldn't speak out the way I'm going to, but I, either WALLACE doesn't understand the argument-

FAIRCHILD: No, if you went down there and talked to him, he called that fellow up and ah, and WALLACE, he told WALLACE to write him a letter, said we, neither one, don't have a clear cut. He's changed his views on it-

JARVIS: FOXWORTH, RICHARD FOXWORTH up-

FAIRCHILD: Yeah.

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JARVIS: Okay.

FAIRCHILD: He's, he's, he's changed his views a hundred percent. He says we do have- And he said you had a good point, said you had an excellent argument there.

JARVIS: Oh, I wish WALLACE would have listened to me two years ago.

FAIRCHILD: Yeah.- Well, he's ah, he's, he's hardheaded, and we all are in a way, but ah-

JARVIS: I know-

FAIRCHILD: But ah-

JARVIS: I, I admit-

FAIRCHILD: He's ah-

JARVIS: Well now is he gonna move back into the building that you're remodeling down there?

FAIRCHILD: Uh-huh, yeah.

JARVIS: I, I went in there. He really kinda hurt my feelings, 'cause I originally approached him about practicing law with him, oil, doing oil and gas stuff-

FAIRCHILD: Yeah-

JARVIS: And he told me that he, he only wanted to go, he only wanted to practice by himself, and I found out he's taking MILTON SCHELESINGER and JOE BUSH in with him. And I told him, I said yeah, I told you I-

FAIRCHILD: He's going (unintelligible). He's got more.

JARVIS: Well, I knew he was taking those two in,

and I, I mentioned that to him when I went down there. All he did was sit back in his chair and smile. I thought he was afraid I was gonna the FAIRCHILD business away from him.

FAIRCHILD: Ah, now he got some clerk of the Supreme Court, didn't he?

JARVIS: JOE BUSH.

FAIRCHILD: Well he's, he's a good, he's a good clerk though, ain't he? He's-

JARVIS: You'll, you'll see, 'cause he, he'll- If, if he's with WALLACE, he'll be, he'll doing some work for you. JOE went, I had several classes with JOE up there. Well, I know ZACK was interviewing a girl that was DAN RUSSELL's clerk, Judge RUSSELL, the federal judge. He's gonna interview her to bring her in there to work with us.

FAIRCHILD: Has he got a pretty good practice?

JARVIS: Ooh, I tell you what- It's, they got me jumping. I got sworn in Friday afternoon, and I was in court yesterday. You know, it's, they keep-

FAIRCHILD: Had court yesterday?

JARVIS: Uh-huh. I was sneaking out today. I had to do some research down here at Southern, 'cause we didn't have- He's got a good law library down there, one of the best I've seen in Hattiesburg, but he didn't have the set of case books that I needed, so I slipped out today, you know, going down there to Southern, and that's where I'm supposed to be right now is over here at Southern's law library.

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FAIRCHILD: Uh-huh-

JARVIS: (Unintelligible) The first day that I went to work with him, that very first day he had, had me over in, we were in court in Marion County on a railroad suit. Just, they got me hittin' the ground runnin'.

On that other stuff, you know, I told you, the letter- I'm trying to figure out- I've been pulling out all that Internal Revenue stuff and State taxes, and I'm trying to figure out some way to balance that out. It, you know, you already know it's gonna cost you to do what you wanna do, but ah if I can come up with somethin', I'll lay it out and then, you know, then let you tell me what you think when that time comes.

FAIRCHILD: Okay. Okay, I appreciate you coming by.

JARVIS: Okay. I'll keep you posted if, if this-

FAIRCHILD: Yeah, give me a call if they come out tonight.

JARVIS: How late you gonna be up?

FAIRCHILD: Oh, I'm on the water wagon now. I don't go to sleep until ten-thirty or eleven o'clock.

JARVIS: Okay. You back off that. You quit the VO again?

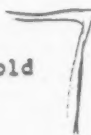
FAIRCHILD: Oh, yeah. Yeah, I been off of that.

JARVIS: That's good.

FAIRCHILD: So-

JARVIS: Okay, I'll let you know-

FAIRCHILD: But this thing, ah, ah, ah, if I've told



any truth in my life, this thing that ah, this thing was already happened- It couldn't be- Now what they have done, (unintelligible). They're thinking that NIXON, maybe, talked to, to ah, ah GEORGE PHILLIPS to get it pulled down here in court. Well, why would I wanna talk to Judge NIXON to, to do that? Why would I want it down here, and why, hell, ah-

JARVIS: Seem like you'da gone straight to GEORGE PHILLIPS if you're gonna do that-

FAIRCHILD: Yeah, I'd go into- Well, I, what they go to CARROLL. Hell, (unintelligible) CARROLL, and ah I've talked to GEORGE PHILLIPS. Don't, but, won't, wasn't you here when me and CARROLL went up there and talked to GEORGE PHILLIPS, and they had me before a grand jury up there?

JARVIS: Uh-uh. When was that?

FAIRCHILD: You were here. It was here, 'bout the, about the PINCH thing. About-

JARVIS: Yeah, I remember that, sure do. I was thinking it had something to do with this.

FAIRCHILD: No.

JARVIS: Okay.

FAIRCHILD: Yeah, but I got him. If, if, and if you can, you, if you'll just tell 'em that, that they had me on the charter of this bank, ah the FBI men, did, and I carried CARROLL up there, and ah CARROLL ah went back there and talked to 'em, and ah, and I told CARROLL I wasn't worried with 'em unless it's something that happened about twelve or fifteen years ago. They said well, it wasn't that, and what it was, into the bribe business. Everybody had a bribe didn't get a charter,

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see, and what I had done, ah SIMS led him to believe we'd give him some stock, see.

JARVIS: Uh-huh-

FAIRCHILD: Well, SIMS didn't wanna do nothing about it, and there wasn't no stock, so we hadn't done nothing, see, and I knew better, bygod. What he was doing, he was gonna ah get ah caught. So if that would have happened, and you can tell 'em that, if I'da wanted to do something, I'd just got CARROLL to go up, but what I think, I think CARROLL and BUD HOLMES went to him and got him to lay low where, let 'em come back there and indict where they could get a big bribe out of it.

JARVIS: That's an idea.

FAIRCHILD: That's exactly what I think. And well, I, I can't be bribed so it didn't work, see. And I think ah, I think that ah- I don't think GEORGE PHILLIPS can be touched.

JARVIS: I don't know GEORGE PHILLIPS. I, I don't know.

FAIRCHILD: Well, I don't think he can be touched, see, but anyway you've got the good picture of it now, and I think you'll-

JARVIS: Okay, I'll-

FAIRCHILD: Feel better after you talk to 'em.

JARVIS: I'll call 'em back from the office, and after-

FAIRCHILD: Okay-

JARVIS: After they come out there, I'll give you a holler at the house.

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FAIRCHILD:

Okay.

JARVIS:

It's now 4:15. I'm leaving FAIRCHILD's office.

END OF RECORDING

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MARIZ FAIRCHILD: Hello.

R. L. JARVIS: MARIZ?

M. FAIRCHILD: Uh-huh-

JARVIS: This is SKIP. Is Mr. WILEY around?

M. FAIRCHILD: Yeah, just a minute, SKIP.

WILEY FAIRCHILD: Yeah. . . .

JARVIS: Hey, I hope I caught you during the sports. I called over there, and they, they said that they were gonna be tied up tonight, and they weren't gonna meet with me tonight, ah that they wanted to get back with me some time tomorrow-

W. FAIRCHILD: Uh-huh.

JARVIS: So I don't know what time they're gonna corner me. Listen. There's, there's one thing I wanna ask you though before they talk to me.

W. FAIRCHILD: Yeah.

JARVIS: You know, you said they were asking about that stuff on NIXON. If- I don't know how much that royalty is producing, but it can't- Is the cost those twenty-five hundred dollar notes. Is that anywhere in the ball park what that stuff was worth?

W. FAIRCHILD: When the deal was made, when we, when the verbal deal was made, hell yeah.

JARVIS: Okay. I just, you know, I was thinking about that. I didn't know how much that stuff has paid him since then. They may come back, you know, take a look at those notes.

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W. FAIRCHILD: Well, you don't know nothing about what that ah- You don't ah-

JARVIS: Okay, you just want me, you just want me to handle it like that.

W. FAIRCHILD: Yeah, but ah, but ah, but it's like it's happened so many times. A deal is made way before everything is, the papers is drawn up, see.

JARVIS: Oh, okay.

W. FAIRCHILD: And ah, and ah, but I assure you the deal was made when that was, that was legitimate, see.

JARVIS: Okay, now, are you gonna be 'round most of the day tomorrow? 'Cause-

W. FAIRCHILD: All day.

JARVIS: Okay, I'll call you just as soon as I meet with them, and I'll let you know what, what happens. Okay?

W. FAIRCHILD: Okay, good.

JARVIS: See you tomorrow-

W. FAIRCHILD: All right.

END OF CONVERSATION

JARVIS: My name is ROBERT L. JARVIS, JR. The foregoing conversation was a telephone conversation between myself and WILEY FAIRCHILD, made at approximately 3:54 on April the 18th, 1984.

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W. FAIRCHILD: Well, you don't know nothing about what that ah- You don't ah-

JARVIS: Okay, you just want me, you just want me to handle it like that.

W. FAIRCHILD: Yeah, but ah, but ah, but it's like it's happened so many times. A deal is made way before everything is, the papers is drawn up, see.

JARVIS: Oh, okay.

W. FAIRCHILD: And ah, and ah, but I assure you the deal was made when that was, that was legitimate, see.

JARVIS: Okay, now, are you gonna be 'round most of the day tomorrow? 'Cause-

W. FAIRCHILD: All day.

JARVIS: Okay, I'll call you just as soon as I meet with them, and I'll let you know what, what happens. Okay?

W. FAIRCHILD: Okay, good.

JARVIS: See you tomorrow-

W. FAIRCHILD: All right.

END OF CONVERSATION

JARVIS: My name is ROBERT L. JARVIS, JR. The foregoing conversation was a telephone conversation between myself and WILEY FAIRCHILD, made at approximately 5:54 on April the 18th, 1984.



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WEINGARTEN:

For the record it is approximately 4 PM on November 1, 1984. We are at the FBI Office in Jackson, Mississippi. Present are Reid Weingarten and Marshall Jarrett from the United States Department of Justice in Washington, Weldon Kennedy from the FBI here in Jackson, Mr. Wiley Fairchild accompanied by his attorney, Wallace Gunn, and John Baltar. We are present pursuant to an agreement between counsel wherein Mr. Fairchild will make a proffer in anticipation of plea negotiations and pursuant to agreement, we will proceed by the United States Attorneys posing questions to Mr. Fairchild. Is that correct for the record?

That's correct.

WEINGARTEN: Okay. Now Mr. Fairchild, of course you're, so you understand, you're presently scheduled to proceed to trial on December 4, 1984. What you're doing now, is you're making a proffer to the United States as the opening salvo in potential plea negotiations. Let me begin by asking you generally, what information do you have as we sit here that might add to or alter your Grand Jury testimony that you gave in Hattiesburg some months ago?

MR. FAIRCHILD: Preacher Shows, who lives in Covington County, me and him have been political friends for 30 years. His son made a doctor. I've loaned him some money to go to school. He later got indicted for selling controlled substance, drugs, writing prescriptions. They tried him and convicted him. Judge Nixon was the judge. He come to Hattiesburg and asked me did I know anybody in Washington that would that I could get to intervene: I said "No". I had heard about Bud Holmes that, flying Nixon to Colorado skiing and different places and having parties out there. I said, "Go see Bud Holmes."

WEINGARTEN: Did you say this to the father or to the son, the doctor? Is this the father?

Preacher Shows.

Preacher Shows, the father.

WEINGARTEN: How do you spell that last name?

S H O W S.

WEINGARTEN: Okay. Preacher is the first name? Is he a preacher or is that just his

Well he is a kind of a preacher, yeah, but ah

Do you know his name Mr. Fairchild?

That's all I know is Preacher and just Dr. Shows, and so I told him to go see Bud Holmes. Dr. Shows and Preacher Shows, his dad, went to see Bud Holmes, went to his home, and they showed him pictures of the judge and all that, you know, kind of put on the dog, you know.

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FAIRCHILD Cont'd:

and they give him a check for \$10,000, and Dr. Shows was satisfied because he expected to get a 18 months sentence, and he got, I think, 6 months but then he wanted to get back, wanted Bud to help him get back to where he could practice again, and Bud wouldn't talk to him. I called Bud and he said oh I didn't, I didn't charge him nothing, said I never was a lawyer of record. I believed Bud and I told Preacher Shows that, I said, "You didn't give Bud no money", he said, "Yeah, I give him a \$10,000 check." He brought the canceled check too.

WEINGARTEN:

Was it made out to Bud Holmes?

FAIRCHILD:

Yes.

WEINGARTEN:

Do you remember what it said on the back? Was it cashed?

Do you remember?

FAIRCHILD:

I don't remember. Well, I looked at it, but I don't remember. Wasn't no doubt in my mind the check was cashed. So this was sometime back, see. So when Carroll come--

About six years ago he thinks.

FAIRCHILD:

Year, ~~about six years ago~~. So when Carroll come and asked me to put the Judge in a good deal, you know the thing just registered with you, you know.

WEINGARTEN:

Well, did you have any reason to believe that any of the money, any of the \$10,000 that Preacher Shows gave to Bud got to Nixon?

FAIRCHILD:

Well I believe that \$10,000 got it reduced from 18 months to 6 months. But that's, well it's just obvious, the pattern was 18 months, 18 months of a first offense.

WEINGARTEN:

Did Bud Holmes tell Preacher Shows or his son what happened to the money?

FAIRCHILD:

I don't know, but Preacher Shows is still in, the Government is still after him. They're still after him, and

WEINGARTEN:

You mean the son?

FAIRCHILD:

Yeah.

JARRETT: Dr. Shows, is he the one that lives in Newton?

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FAIRCHILD:

Yessir.

Okay.

FAIRCHILD:

Because he come to me, Dr. Shows, again, see, and told me I just don't remember what all, but wanting me to intervene again, see. And, ah and he was going to Texarkana and seeing this fellow see. This convict was in there, who had, Naw, a convict there.

Was his name Smith? You don't know his name?

FAIRCHILD:

I don't know his name. But anyway they got that fellow and brought him to Jackson here and he said to the FBI, I assume here, that Dr. Shows told him, said you don't have nothing to worry about. Says I got George Phillips.

JARRETT:

Shows is telling this to who?

FAIRCHILD:

Shows telling

JARRETT:

To this convict?

FAIRCHILD:

No, no, the ex-convict was supposedly testifying to the FBI here or George Phillips. Not George Phillips, the prosecutor. And he says you don't have to worry about your case, says I got George Phillips fixed with a contractor friend in Hattiesburg.

Who said that?

FAIRCHILD:

The convict that they brought from Texarkana.

WEINGARTEN:

Said that to Dr. Shows?

FAIRCHILD:

Yeah. George Phillips called Carrell Ingram. That's where I got my information. So I, Preacher Shows come down to see me and I said, Preacher, you've embarrassed the hell out of me. I told him what happened. I said, I've said nothing about it. I said, besides George Phillips, I don't think nobody can get to him. He hasn't been back to my office since. So much for that.

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WEINGARTEN:
I'm just a little confused.

JARRETT:
Yeah, I am too, Let me ask you about that. The convict was saying that he had George Phillips taken care of or Shows was saying he had George Phillips taken care of?

FAIRCHILD:
Shows told the convict that he had George Phillips taken care of through a contractor friend in Mattiesburg.

WEINGARTEN:
Is there any reason to believe that?

FAIRCHILD:
No, no, no.

JARRETT:
Were they referring to you as the contractor?

FAIRCHILD:
Yes.

JARRETT:
They were referring to you. Okay.

FAIRCHILD:
The doctor was trying to get this convict here to not squeal on him. That was in my opinion.

WEINGARTEN:
I see. So that's all garbage. That part's not true?

FAIRCHILD:
That's all garbage. Yes, absolutely, I never talked to George about anything since he's being prosecuting.

WEINGARTEN:
So that the important evidence is that Preacher Shows gave \$10,000 to Bud Holmes for his son's case. His son was originally anticipating 18 months, wound up with a sentence of six months.

FAIRCHILD:
Yeah.

WEINGARTEN:
Now, Preacher Shows goes back to Bud Holmes and says I want my son to resume his practice and Bud says, "No, I can't help you there."

FAIRCHILD:
Well he wouldn't return his phone calls or something, so he got me to call Bud Holmes, see.

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WEINGARTEN:

And Bud said to you again?

FAIRCHILD:

He says, ah, "Oh, I never was attorney of record." Says, "I didn't charge him anything."

WEINGARTEN:

Do you happen to know who was the attorney of record? Who represented the son?

FAIRCHILD:

It was some lawyer here in town.

WEINGARTEN:

Was there a jury trial or was it a plea of guilty?

FAIRCHILD:

No, it was a jury trial.

WEINGARTEN:

Do you remember who the prosecutor was? Would you know that?

Was it John Hopgood (or Hopson)?

FAIRCHILD:

No. (It was his assistant)

WEINGARTEN:Was it a Federal case? Obviously it was a Federal case, it was Judge Nixon.FAIRCHILD:

Oh yeah, yeah, it was a Federal case.

You could make a phone call to Preacher Shows. Get one of your men over there, he'd tell you.

WEINGARTEN:I'm sure we could pull the file.FAIRCHILD:

Oh yeah.

JARRETT:

We know Dr. Shows.

GUNN(?):There would probably be some phone calls at that time from Bud to Judge Nixon. That was six years ago.WEINGARTEN:

And you were about to start on the time when someone came to you or Carroll came to you and

FAIRCHILD:

And asked me to put Judge Nixon in a deal. He said he had kids in school in college and he was having a hard time, so I put him in a deal and I put him in three different deals that I thought would pay off good because I was scared not to, although three months before my son had done his plea bargain with George, I'm getting confused.

WEINGARTEN:

No, that's true, that's true. So far, so good.

FAIRCHILD:

When I actually signed the deeds, you know, and it was so called, you know, when I actually signed them, three months before that I had, I had

WEINGARTEN:

Drew had been up here.

FAIRCHILD:

Yeah, made his plea bargain. But anyway when he asked me, knowing, and I wish I had made this statement to start with, I want to cooperate with you all to the fullest extent. If it hadn't been for them three damn crooks, I wouldn't be into it, see.

WEINGARTEN:

When you say three who are you referring to?

FAIRCHILD:

Carroll, Bud Holmes and the Judge. I'm going to do everything I can, I'm going to tell you everything I can remember. Now there may be some things I can't remember that night, if Carroll decides to cooperate and I think he will when the nut cutting, when it gets down to that. He might can freshen my memory and Skip Jarvis might could refresh my memory. I said that before the Grand Jury that I didn't well that I didn't remember negotiating on the price but I know I did. I just had to be and change that from 1 acre to 1 acres. Wouldn't nobody have done that but me.

WEINGARTEN:

I know that.

FAIRCHILD:

But there's where Skip or Carroll Ingram

WEINGARTEN:

Well what would have caused, who, would it have been because Nixon wanted more?

FAIRCHILD:

Obviously it was something that was said to me that caused me to do that see and I'm being honest when I just can't remember. That's why I say that if Skip or Carroll or if I could and I'm just, again when I decide to come up here and do this I'm talking to people, you know, that will jog my memory up see, and my son has told me some things that I had forgotten all about. One of the things that he

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FAIRCHILD Cont'd:

told me about that I called his wife and told her Carroll had brought me a copy of this thing where it had been passed to the file, see, his case had been passed to the file. She come over there and got it, but these, that's on December 23. But anyway, we been trying to get some dates from Maxwell Air Force Base. A day that Bob Broyles and Bill Porter went over there and spent one weekend to see Joe Crone and my testimony before the Grand Jury. He come out there, I think it was a Monday morning see, and says to me, Bob Broyles said to me, and Bob Broyles said to me, now Bob Broyles was a partner with Drew see at the airport, they were 50-50 partners, but he says to me, says Bill Porter coming on back from Montgomery, said if Drew would get up off his money he could come clean and Bob Broyles said, Well, Drew don't have no money. And he said well, but his old man does. He said well, that not his. That's not Drew's money, that his and he said well if he knew his son's ass was going to get in a crack he'd get up off of it. Bob was sitting across, and I said, Now Bob, I've got your message but the answer is not No, it's Hell No. I'm trying to place that date with the time that I called Carroll and told him to bring Judge Nixon out to the office. But anyway Carroll brought him out to the office.

KENNEDY:

You're apparently angry about this. This made you real angry. Is that why then you called Ingram.

FAIRCHILD:

Oh very angry. I get angry everytime I talk about it. Your men will tell you that when they come down there, when I asked them to come down there. But anyway, Nixon come in and I talked to Nixon just like I would, uh, if I had a tape recording of it. I told him, I said, Now my son is guilty. But I said Bob Broyles there is just as damn guilty. He was at the airport and my son was in the bed asleep. But I said he indicted my son because his dad had some money. And I said I don't like it a damn bit but just go indict this other fellow and go threat them both alike. I told Judge Nixon that and I were mad and I think I, then, this was one evening. My secretary remembers Carroll bringing a man in the office and him staying there, and she carried him on back to the coffee. Carried Carroll back.

WEINGARTEN:

Is this Margaret Buckley?

FAIRCHILD:

No, she's more of the bookkeeper type. This, and,

This secretary is still there?

FAIRCHILD:

She's there, yes.

WEINGARTEN:

Does she remember seeing Judge Nixon? Secretary?

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FAIRCHILD:

Yeah, I asked her when you asked me to find out this yesterday and but she wouldn't recognize him. So

Did she remember Carroll?

FAIRCHILD:

Oh yeah, she remembered Carroll.

She remembered Carroll bringing a man back there who she didn't know and taking him in the office and then she took Carroll back to the coffee room and Mr. Fairchild

FAIRCHILD:

So that night I had just lay down, phone rang, and a voice said, Wiley, says the man that we talked about this evening, I'm over at his house. He says and I've talked to him and things are going to be all right. I said, well good.

Who called you?

Judge Nixon.

WEINGARTEN:

Was it Judge Nixon? Did you recognize him?

FAIRCHILD:

Yeah I recognized him, but I'm giving you verbatim what was said, see. And so I guess he was scared the phone might be tapped.

KENNEDY:

He said again what now. Say what he said again.

FAIRCHILD:

He said, Wiley, the man that we talked about this evening, I'm over at his house and everything is going to be all right. I said, well good. We said something else, you know, I'd done got the important thing, I don't remember. But after awhile, he said, "He wants to talk to you. I said, Good and he says, of course Bud got on the phone and he said, Wiley when this man asks me to do something, says, I don't ask no questions, I just do it. I said, Well I appreciate that very much. So that ended that and we're trying to tie that date down because when Bob Broyles came back from Maxwell, see, and I think it was pretty close to the time it was passed to the files.

WEINGARTEN:

Well, why did you want Judge Nixon then because at that point the case was in state court. Why did you tell Carroll to bring you Judge Nixon?

FAIRCHILD:

He owed me a favor. That's the way I looked at it.

WEINGARTEN:

And why was that, just so it's clear?

FAIRCHILD:

Well I had put him in what I thought was 3 good deals but turned out it was two good deals.

WEINGARTEN:

What else? What other things can you tell us that add to your Grand Jury testimony?

FAIRCHILD:

Well to get back to the price of that and to the dating of them, you know like I said awhile ago, I hadn't since I decided to do this. I hadn't you know done things and went back over things where, but the biggest thing, if Skip Jarvis or Carroll Ingram could help me remember what went on about the back dating, I know what went on about the back dating. We went ahead and made them out and sent them to Carroll see, and he said back date them see. Of course they were first dated when they were supposed to be.

WEINGARTEN:

Okay, can we go off the record for a second?

DECLARATION OF JOHN D. BALTAR

John D. Baltar of Hattiesburg, Mississippi hereby make the following declaration:

1. I am administrative assistant to Mr. Wiley Fairchild of Fairchild Construction Co. in Hattiesburg, and worked in that capacity from 1984 through 1986, when Mr. Fairchild was investigated by and prosecuted by the federal government. At Mr. Fairchild's request, I attended a number of meetings with federal prosecutors and agents during that time and assisted those officials in several ways.

2. My first involvement with the federal investigation was in April 1984, when Mr. Fairchild asked me to contact George Phillips, the United States Attorney for the District of Mississippi, concerning Mr. Fairchild's belief then that he was the object of blackmail by the Forrest County District Attorney, Paul Holmes. When I spoke to Mr. Phillips, he referred me to Weldon Kennedy of the Federal Bureau of Investigation, who arranged to have FBI agents interview Mr. Fairchild the following morning. I later learned that the FBI had wanted to interview Mr. Fairchild for some time, but was unsure as to how to approach him.

3. In several conversations with Mr. Fairchild, during which I was present, federal prosecutor Reid Weingarten stated that if Mr. Fairchild could give him a "smoking gun" that would convict Judge Nixon, Mr. Fairchild would not be indicted.

WHY?
I MADE A MISTAKE. I TREATED NIXON AS I HAD OTHERS BEFORE. I DID NOT WANT TO
DO WRONG. I DID NOT KNOW IT WAS A CRIMINAL OFFENSE TO HELP A JUDGE.

HAVE YOU MADE A DEAL TO TESTIFY IN THIS CASE?

NO

WHEN DID NIXON COME UP AFTER THE PHONE CALL TO HIM FROM YOU?
HE CAME UP WITHIN A FEW DAYS.

DID YOU EVER HEAR FROM NIXON AFTER HIS VISIT?
YES. THAT NIGHT NIXON CALLED AND SAID "WILEY, YOU REMEMBER THAT MAN WE WERE TALK-
ABOUT THIS AFTERNOON. WELL, I AM AT HIS HOUSE AND HE SAYS EVERYTHING WILL BE ALL
RIGHT." THEN BUD GOT ON THE PHONE AND SAID "WILEY, WHEN THIS MAN ASK ME TO DO SO
I DO IT." I THANKED HIM FOR CALLING AND SAID I WOULD SLEEP ALOT BETTER THAT NIGHT

DID YOU TELL ANYBODY ABOUT THAT CALL?
YES. I TOLD CARROLL INGRAM.

WHAT HAPPENED NEXT?
BREW'S CASE WAS PASSED TO THE FILES. CARROLL BOUGHT ME THE PAPERS OUT AND SAID "THE
CHRISTMAS". I WAS SO EXCITED THAT AT LAST IT WAS ALL OVER. I CALLED BREW'S WIFE
AND SHE CAME OUT AND I GAVE HER A COPY.

HOW DID THE CASE GET BACK ON THE DOCKET?
WHEN JUDGE MCKENZIE CAME IN AND TOOK JACK WELDT'S PLACE.

DID YOU EVER SEE JUDGE MCKENZIE?
YES, I CAME IN ONE MORNING AND THEY TOLD ME THAT BUD HOLMES HAD CALLED.
THEY TOLD HIM THAT I SHOULD BE IN SHORTLY. I TOLD THEM IF HE CALLED BACK THAT
I WAS NOT HERE BUT THEY SAID HE WAS COMING OUT, SO I TOLD THEM TO GO AHEAD AND
CALL ME WHEN HE GOT HERE AND IN A FEW MINUTES BUD AND JUDGE MCKENZIE CAME, SO
I GOT RODNEY TO COME IN THE OFFICE WITH US. BUD SAID "WILEY, NOBODY IS AFTER
BREW. NOTHING IS GOING TO HAPPEN TO HIM. GET AROUND OF BREW AND TELL HIM TO
JUST LET IT SLIDE. DO NOT LET THE PRESS GET AROUND OF THIS CAUSE THEY WILL JUST
SCREW THINGS UP." BUD SAID JUST LET IT SLIDE. "JUDGE MCKENZIE COULD GIVE BREW
20 YEARS BUT ME AND THE JUDGE GET ALONG REAL WELL. NOTHING IS GOING TO HAPPEN
TO BREW."

WHAT DID JUDGE MCKENZIE SAY?
HE DID NOT SAY ANYTHING, HE JUST SAT THERE AND NODDED, LIKE HE AGREED.

CROSS EXAMINATION:

WHY DID YOU CARE WHAT WOULD HAPPEN TO DRENT
BECAUSE I'M PROUD OF THE FAIRCHILD NAME, AND HE'S MY SON.

DID YOU TALK WITH MR. WEINGARTEN ABOUT TESTIFYING?
YES

WHAT DID HE TELL YOU TO SAY?
HE TOLD ME TO JUST TELL THE TRUTH, AND THAT'S WHAT I'M DOING.

WHY WERE YOU INDICTED?
BECAUSE MY LAWYER ADVISED ME NOT TO HELP THE FEDS INVESTIGATION AND EARL
KEFFER TOLD ME THEY COULD NOT USE MY TESTIMONY AGAINST ME.

STATE OF MISSISSIPPI
COUNTY OF HARRISON

AFFIDAVIT OF JOHN D. BALTAR

PERSONALLY appeared before me, the undersigned authority in and for said County and State, the within named JOHN D. BALTAR, who after being first duly sworn by me, states on his oath as follows:

1. My name is John D. Baltar and I presently reside at 400 Graymont Avenue, Jackson, Mississippi 39205.

2. In November of 1983, I became employed by W. R. Fairchild Construction Company, Ltd., of Hattiesburg, Mississippi as the Administrative Assistant to Wiley Fairchild. I remained in that position until May of this year when I left to pursue my own independent consulting interest.

3. In the early evening of Friday, April 6, 1984, Mr. Fairchild called me at home. He sounded upset and was, as usual for that time of day, inebriated. Mr. Fairchild stated that he thought he was being blackmailed by Bud Holmes over his son's drug case which was then pending in the Circuit Court of Forrest County, Mississippi. He instructed me to call George Phillips, the U.S. Attorney for the Southern District of Mississippi, and explain to him about the alleged "blackmail".

4. On Monday, April 9, 1984, I called George Phillips and asked him if he knew anything about Mr. Fairchild's son's drug case. Mr. Phillips replied he knew more about it than he wanted to know. I relayed Mr. Fairchild's complaint to Mr. Phillips and he responded he would have one of his men contact me concerning the complaint. Later that day I received a phone message from Mr. Weldon Kennedy of the FBI and I returned his call. Mr. Kennedy advised me Mr. Phillips had contacted him concerning Mr. Fairchild's

complaint and asked whether Mr. Fairchild would agree to be interviewed by the FBI the following day, April 10, 1984. I called Mr. Fairchild who stated he would agree to meet with FBI agents the following day at his office in Hattiesburg, Mississippi. Mr. Fairchild left for a vacation on April 12, 1984 and I did not have an opportunity to discuss this with him until his return several days later. At that time, Mr. Fairchild told me the FBI was interested in the oil and gas investments which Judge Walter Nixon had made with him. Mr. Fairchild stated that there was nothing to it.

5. Mr. Fairchild was subpoenaed to testify before a Special Grand Jury on July 18, 1984. I attended these proceedings with him, however, I remained outside the Grand Jury while he testified that afternoon and the following morning.

6. In early September of 1984, Mr. Fairchild was indicted by that Grand Jury on one count of giving an illegal gratuity and another for allegedly lying to the Grand Jury during his testimony. Mr. Fairchild wanted an attorney who had connections with the Federal Court and Mr. Charles B. Arendall, Jr., of Mobile, Alabama was retained because he was a former law partner to a Federal Judge in Alabama. Mr. Arendall advised Mr. Fairchild that it did not matter what his intentions were at the time he allowed Judge Nixon to invest with him, he was "guilty as hell". He told Mr. Fairchild he would probably be convicted of giving an illegal gratuity to a Federal Judge.

Since Mr. Arendall was not a criminal attorney, he advised Mr. Fairchild to hire Attorney Barry Hess of Mobile, Alabama. Mr. Hess was retained by Mr. Fairchild. At some point in time, Mr. Hess advised Mr. Fairchild that a new Federal act which would be in effect at the time of his trial would require that he begin serving his prison sentence upon conviction and would not be

entitled to bail pending appeal. Mr. Hess advised him that he would probably have served his prison sentence by the time the appeal was decided.

7. In October of 1984, we had several meetings with government representatives, including Reid Weingarten, to discuss plea negotiations. Mr. Weingarten told us that Mr. Fairchild would have to provide him with a "smoking gun" against Judge Nixon in order to reach a plea bargain. During this time, Mr. Fairchild tried to think of things that were incriminating against Judge Nixon. For example, the Preacher Shows alleged pay-off scheme and the alleged murder of Bill Porter by Bud Holmes to collect on a credit life insurance policy were two attempts by Mr. Fairchild to provide Mr. Weingarten with "a smoking gun". Some of the rumors and stories Mr. Fairchild came up with during this period of time were so incredible that we had to convince him not to relate them to Mr. Weingarten.

8. Sometime in late October of 1984 we met in Jackson, Mississippi at the Ramada Inn Coliseum with Mike Martinson and Dick Morris who had conducted a poll Mr. Fairchild had commissioned to determine how potential jurors would vote in his trial. At this meeting, the pollsters advised that the potential jurors were split 50% guilty and 50% not guilty before being advised of Robert Jarvis' involvement in the case. Upon being advised of Robert Jarvis' participation, the results were 80% not guilty and 20% guilty. Mr. Fairchild wanted a guarantee that he would be found "not guilty", which the pollsters refused to give him.

9. During the ride home from Jackson, Mr. Wallace Gurn, Mr. Fairchild and I were discussing the poll results. Mr. Fairchild was concerned that the pollsters could not guarantee his acquittal and stated that, "I want to know where I will be spending Christmas". At this time, Mr. Fairchild for the

first time told us of the phone call from Bud Holmes' farm involving Judge Nixon and his meeting with Judge Nixon prior to the phone call. Mr. Fairchild said that Bud Holmes had called him and said I got a man here that wants to talk to you. After that, Judge Nixon got on the phone and said, "You know that matter we were talking about this afternoon? I am out here with that fellow and everything is going to be alright". Mr. Fairchild related Judge Nixon then stated Bud wanted to talk to him again and Bud Holmes got back on the phone and stated, "When this man asks me to do something, I do it". Mr. Fairchild then told us that this phone call followed a meeting he had with Judge Nixon at his office which he had requested. In that meeting, he told Judge Nixon he thought Bud Holmes and Carroll Ingram were trying to blackmail him by dragging his good name through the mud. When questioned further by us during the ride home, Mr. Fairchild could not remember when this meeting and phone call took place, however, he related it in time to a visit he had from Bob Royals. Mr. Royals went to Mr. Fairchild's office and stated he had been to visit Joe Crone with Bill Porter at Maxwell Air Force Base. Bill Porter had stated to Royals that Drew would not have his tail in a crack if he would get up off his money to which Royals replied, "Drew hasn't got any money". Bill Porter stated "but his old man does". Mr. Fairchild stated, "Bob, I got your message, the answer is not no, it is hell no."

10. After this conversation with Mr. Fairchild either I or one of Mr. Fairchild's attorneys called Mr. Weingarten to tell him what we had in reference to this new information. I requested that the government determine when Bob Royals visited Joe Crone with Bill Porter at Maxwell Air Force Base since this visit coincided in Mr. Fairchild's mind with the approximate date that he discussed the blackmail allegation with Judge Nixon and the phone call

4

was made. We were later informed by Weingarten or an FBI agent that the date of Royal and Porter's visit to Crone did not coincide with the other facts.

11. On November 1, 1984, Wallace Gurn, Wiley Fairchild and I went to Jackson, Mississippi to meet with Weingarten at the FBI office. We arrived shortly after 1:00 p.m. and Mr. Weingarten arrived sometime later. Mr. Fairchild related to Mr. Weingarten the same information he had given us in the car several days earlier. At this point, Mr. Weingarten stated to Mr. Fairchild and to us that this was "not a smoking gun". Mr. Weingarten stated in order for Mr. Fairchild to get a plea bargain, he would have to first admit the oil and gas investment with Judge Nixon was an illegal gratuity. He further stated that the evidence showed that Mr. Fairchild had entered into the oil and gas investment after Drew Fairchild's drug bust in August of 1980 and he would have to change his testimony and state that that's how it occurred.

Mr. Weingarten told Mr. Fairchild that the phone call was made before Drew Fairchild's case was passed to the files by Bud Holmes. Mr. Weingarten stated that Mr. Fairchild would have to testify that Judge Nixon had placed the phone call and that this occurred prior to the case being passed to the files in December of 1982. It was clear that if Mr. Fairchild could provide that testimony then a "plea bargain" would be possible.

After two (2) or three (3) hours of discussions and after we felt comfortable Mr. Fairchild could say the things Mr. Weingarten wanted him to say, it was agreed that we would tape Mr. Fairchild's proffer in another room. This was done after which Mr. Weingarten stated that he would let us know whether Mr. Fairchild's testimony was good enough for a "plea bargain".

Either at this meeting or in a subsequent meeting and before Mr. Fairchild's second appearance before the Grand Jury on November 28, 1984, Mr.

Spit

Fairchild also wanted an agreement from Mr. Weingarten that he would help his son, Drew, to which Mr. Weingarten responded he would do what he could to help Drew. *

12. Some time after our meeting with Mr. Weingarten on November 1, 1984, Mr. Hess advised us that Mr. Weingarten had agreed to a plea bargain as I have related in my previous declaration. During that month, I had several conversations with Mr. Weingarten during which Mr. Weingarten stressed to me how important it was to keep Mr. Fairchild on track with his testimony and that he testify to important points which Mr. Weingarten had said he needed before he would agree to the plea bargain. One such occasion was at the time Mr. Fairchild entered his plea of guilty in New Orleans, Louisiana on November 26, 1984. Mr. Fairchild was to reappear before the same Grand Jury and testify as Mr. Weingarten wanted. Mr. Weingarten talked to me privately and emphasized that Mr. Fairchild should be rehearsed by me so that he would testify before the Grand Jury to the following: ① that Carroll Ingram first approached Mr. Fairchild about the oil and gas investment with Judge Nixon after his son Drew's drug bust in August of 1980; ② that the oil and gas interests which he sold Judge Nixon were worth way more than what Judge Nixon paid for them; ③ that the meeting with Judge Nixon and Mr. Fairchild concerning the alleged blackmail by Bud Holmes took place before Drew's State drug case was passed to the files; ④ that the phone call from the farm that evening was placed by Judge Nixon. correct
to 14
65
SARIF

I told Mr. Weingarten that I would rehearse this with Mr. Fairchild and he would be prepared for his testimony on November 28, 1984.

13. I prepared a written summary of what Mr. Fairchild would be asked by Mr. Weingarten and the answers that Mr. Weingarten wanted from Mr. Fairchild. Mr. Fairchild spent a great deal of time reviewing and rehearsing this

[Handwritten mark]

[Handwritten notes in margin:]
What happened to him
lead
FBI's
have to

testimony prior to his appearance before the Grand Jury. I accompanied Mr. Fairchild to the Courthouse on November 28, 1984 for his Grand Jury appearance. After Mr. Fairchild testified, Mr. Weingarten seemed pleased with the results.

14. In the following year, FBI agents would visit Mr. Fairchild's office seeking information and copies of documents. In the Spring of 1985, Mr. Weingarten assisted Drew Fairchild as he had promised Mr. Fairchild and as I have previously related in my first declaration.

15. Sometime during 1985, Mr. Fairchild wanted to go ahead with the sentencing on his guilty plea in Federal Court. He stated he knew Mr. Weingarten did not want to sentence him until after Judge Nixon's trial so he could hold something over his head.

Mr. Fairchild instructed me to call Mr. Weingarten and tell him he would testify the way Mr. Weingarten wanted him to at Judge Nixon's trial if he got sentenced before the trial. Mr. Weingarten was hesitant, however, after Judge Nixon got indicted Mr. Weingarten agreed that the sentencing could take place. In September of 1985, we attended the sentencing hearing in New Orleans, Louisiana. Before we went into the Courtroom for the sentencing, Mr. Fairchild said to Mr. Weingarten: "Just like I told John, you don't have to worry about me, I am going to say whatever you want me to say at Judge Nixon's trial."

At the sentencing hearing, Mr. Weingarten recommended, as he had promised, that Mr. Fairchild not serve any time; however, the Court sentenced Mr. Fairchild to serve sixty (60) days in a halfway house in Jackson, Mississippi.

16. After Mr. Fairchild had served his sentence, he instructed me to call Mr. Weingarten to inquire about a pardon. I called Mr. Weingarten and he stated he would help Mr. Fairchild, but that there were certain procedures for

700

Any pardon
must be
before them?

obtaining a pardon and explained some of those procedures. He further explained that those who made the decisions on Mr. Fairchild's pardon would come to him as prosecuting attorney for his opinion. He implied that he would have some control over whether Mr. Fairchild received a pardon. He stated that he would not help with the pardon until after Judge Nixon's trial. I related Mr. Weingarten's statements to Mr. Fairchild.

17. Several days before Judge Nixon's trial was scheduled, Mr. Weingarten called me to pick him up at the Howard Johnson's so that Mr. Fairchild, he and I could meet to prepare Mr. Fairchild for his trial testimony. It was during this meeting between the three (3) of us that Mr. Weingarten reviewed the points he wanted Mr. Fairchild to cover in his testimony which included those that he had previously had me rehearse with Mr. Fairchild prior to his Grand Jury testimony. As we covered the questions Mr. Weingarten was going to ask Mr. Fairchild on the stand, Mr. Weingarten would write the specific questions on his pad, we would then discuss the answer with Mr. Fairchild and as soon as Mr. Weingarten was comfortable that Mr. Fairchild could answer the question as Mr. Weingarten wanted, then he would write down that answer on his note pad. As we covered these questions and answers, if Mr. Weingarten did not feel comfortable that Mr. Fairchild could remember the answer or, if it seemed to confuse him, he would state that he was not going to ask that question. When Mr. Weingarten finished writing down the questions and answers, Mr. Fairchild instructed me to get the questions and answers from Mr. Weingarten's notes just like he had them to be typed for him to study before he gave his testimony. Mr. Weingarten agreed that this was a good idea and let me borrow his list of questions and answers and I copied them verbatim from his note pad and had Mr. Fairchild's secretary type them up for him to study.

8/24

A copy of these questions and answers are attached to my original declaration as Attachment 2.

During this meeting, Mr. Weingarten stated that he was relying primarily on Mr. Fairchild's testimony and that he could not rely on Mr. Jarvis because Mr. Jarvis had proven to be not credible in the past. It was very important to Mr. Weingarten that Mr. Fairchild testify that the meeting with Judge Nixon and the phone call from Bud Holmes' farm took place before Drew's case was passed to the files. Mr. Weingarten told Mr. Fairchild that when asked how he could remember that the phone call and meeting with Judge Nixon was before Drew's case was passed to the files, he was to state he remembered it because he was mad at Bud because the case had not been passed to the files as promised. Mr. Weingarten also stated that he was concerned that the defense lawyer would use the recorded conversation Mr. Fairchild had with Robert Jarvis in April of 1984 against him. He told Mr. Fairchild when asked about the Jarvis tape recorded conversation, he was to say that he was not being honest with Jarvis at that time and was telling Jarvis just what he wanted him to hear.

17. During the trial and up to the time Mr. Fairchild went on the witness stand, Mr. Fairchild studied the type written questions and answers and he and I rehearsed those questions and answers in a room at the Federal Courthouse. Several times prior to Mr. Fairchild's testimony, Mr. Weingarten checked with us and would inquire as to whether Mr. Fairchild was ready to give the prepared testimony. During these visits the typewritten questions and answers were either in Mr. Fairchild's hands or on the table or chair and in plain view of Mr. Weingarten. Mr. Weingarten appeared very nervous and concerned that Mr. Fairchild would not be able to keep his answers straight on the key points.

18. After Judge Nixon's conviction and at Mr. Fairchild's instructions, I called Mr. Weingarten to inquire about Mr. Fairchild's pardon. Mr. Weingarten replied that he would help Mr. Fairchild but he could not do so until after the Judge Nixon matter was completely concluded.

THIS THE 3rd day of August, 1988

John D. Baltar
JOHN D. BALTAZ

SWORN TO AND SUBSCRIBED BEFORE ME on this the 3rd day of August, 1988.

Janet L. Leduc
NOTARY PUBLIC

My Commission Expires:

2-28-90

DECLARATION OF WILEY FAIRCHILD

Wiley Fairchild of Hattiesburg, Mississippi hereby makes the following declaration:

1. I attended negotiations with federal prosecutor Reid Weingarten in November 1984 concerning a plea agreement with respect to a federal indictment against me for one count of perjury and one count of giving an illegal gratuity. The plea agreement called for the government to dismiss the perjury charge and for me to plead guilty to the gratuity charge. Under the final agreement, as I understood it, Mr. Weingarten said that the gratuity charge would be dropped if he later became convinced that there was no connection between my oil investment with Judge Walter Nixon and the handling of the drug charges against my son, Drew.

2. Mr. Weingarten also stated on several occasions in early 1985 that he would do what he could to help my son, Drew.

3. Although I did not believe I had committed a crime -- and even though Judge Nixon's investment had nothing to do with Drew's case -- I pleaded guilty because I was afraid of going to jail and because my lawyer told me that if I was convicted they would put me in handcuffs and then take me straight to jail that instant.

4. Before my sentencing hearing in New Orleans in September 1985, my attorney, Wallace Orr, related to me what Mr. Weingarten had advised that I should say at the hearing. Mr. Weingarten stated that I should tell the court that I had made a mistake and was sorry. I was afraid not to say in court what Mr. Weingarten said I should say.

5. I met with Mr. Weingarten on several occasions between September 1984 and my testimony at Judge Nixon's trial in January 1986. At those meetings we discussed my testimony against Judge Nixon. Mr. Weingarten told me on several occasions that he needed a "smoking gun" to use against Judge Nixon.

6. Based on Mr. Weingarten's statements at the time of my plea agreement and based on our course of dealing in 1984 and 1985, I was led by Mr. Weingarten to believe that if my testimony at Judge Nixon's trial satisfied him, Mr. Weingarten would do everything he could to help me, including assisting in getting a pardon. I also had the distinct impression that if my testimony at the Nixon trial did not please Mr. Weingarten he would not help me.

I declare under the penalty of perjury that the foregoing is true and correct.

DATE: 4 March, 1988
845 KTT

Philip L. Smith
WITNESSES

775



U.S. Department of Justice

4

JMC:jev

Washington, D.C. 20530

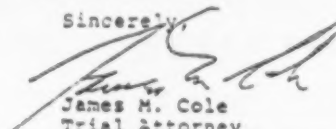
AUG 25 1928

David Overlock Stewart, Esq.
Miller, Cassidy, Larroca & Lewin
2555 M Street, N.W.
Washington, D.C.

Dear Mr. Stewart:

Pursuant to the Court's discovery order and the Government's continuing obligations thereunder, I enclose a document which has just come to the Government's attention. The document is an Airtel from the FBI in Jackson, Mississippi, to FBI Headquarters in Washington, D.C. You are being provided with a redacted copy. The portions which have been redacted do not fall within the ambit of the Court's order.

Sincerely,


James M. Cole
Trial Attorney
Public Integrity Section
Criminal Division

Enclosure

cc: John F. Nangle
U.S. District Judge
Boyce Holloman, Esq.



FD-36 (Rev. 3-22-62)

FBI

TRANSMIT VIA:

- ☒ Teletype
☐ Facsimile
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PRECEDENCE:

- ☐ Immediate
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CLASSIFICATION:

- ☐ TOP SECRET
☐ SECRET
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☐ UNCLAS E F T O
☐ UNCLAS

Date 11/1/84

FM JACKSON (583-109) (P)

TO DIRECTOR (58-11332) PRIORITY ✓

ATTN: SUPERVISOR DENNIS AIXEN
 PUBLIC CORRUPTION UNIT

B:

UNCLAS

WALTER LOUIS NIXON, JR., CHIEF U. S. DISTRICT COURT JUDGE, SDM,
 BRIBERY - U.S.D.C. - PUBLIC CORRUPTION; OO: JACKSON.

RE JACKSON TELETYPE TO THE BUREAU, DATED OCTOBER 18, 1984.

THE FOLLOWING IS A SUMMARY OF PERTINENT EVENTS IN THIS MATTER

2 - JACKSON
 KES:inc
 (1)

583-109-3
 Searched _____
 Serialized
 Indexed
 Filed

Approved: W.H./JmTransmitted: 003

(Number)

0765

(Time)

For

15/1

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W.H./Jm - 7/1

16 (Rev. 8-22-82)

S

F.A

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☐ UNCLAS

Date _____

PAGE FOUR UNCLAS JN 56B-109

ON NOVEMBER 2, 1984, U.S.D.J. ATTORNEYS AND JACKSON SAC; AND CASE AGENT MET WITH JORN BALTAR DURING WHICH MEETING BALTAR WAS ASKED TO CONVEY TO ATTORNEY WALLACE GUNN AND TO WILEY FAIRCHILD THAT THE GOVERNMENT'S POSITION IN THIS MATTER IS THAT FAIRCHILD HAS NOT FURNISHED SUFFICIENT VERIFIABLE INFORMATION WHICH WOULD CAUSE THE GOVERNMENT TO DISMISS CHARGES PENDING AGAINST FAIRCHILD AND A COUNTER-PROPOSAL WAS MADE BY U.S.D.J. ATTORNEYS WHEREBY IF FAIRCHILD WOULD PLEAD GUILTY TO ONE COUNT DEALING WITH FURNISHING A GRATUITY TO SUBJECT THAT COUNT NUMBER TWO OF THE INDICTMENT (PERJURY) WOULD BE DROPPED AND THAT SENTENCING WOULD THEREAFTER BE DEFERRED PENDING FULL COOPERATION BY FAIRCHILD.

BALTAR ADVISED HE WOULD RELAY THAT MESSAGE TO ATTORNEY GUNN AND FAIRCHILD; HOWEVER, HE FELT THAT FAIRCHILD DEFINITELY DOES NOT FEEL HE EVER DID ANYTHING WRONG IN FURNISHING THE GRATUITY EVEN THOUGH HE KNOWS IT TO BE AGAINST THE LAW. HE FEELS IT WOULD BE AGAINST FAIRCHILD'S PRINCIPLES TO PLEAD GUILTY IN ANY COURT WHEN HE PERSONALLY FEELS HE DID NOT COMMIT A CRIME.

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

A (Rev. 8-25-83)

A - FBI

TRANSMIT VIA:

- ☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

- ☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

- ☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE FIVE UNCLAS JN 583-109

IT IS ANTICIPATED THAT FAIRCHILD'S ATTORNEYS WILL BE IN CONTACT WITH U.S.D.J. ATTORNEYS REGARDING THE ABOVE PROPOSAL WITHIN THE NEXT WEEK. IN THE MEANTIME, JACKSON IS PREPARING FOR TRIAL IN THIS MATTER NOW SCHEDULED FOR DECEMBER 3, 1984.

BT

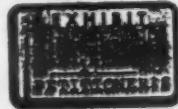
003

NNNN

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

Barry Hess
 5000
 Single
 150
 July 26
 3-36
 (Jury or West)
 10-8
 9:00 Monday - 26th
 3rd floor - July Case -
 follow
 Legal
 Proceeding

Informal Agreement.
 If co-operating provides more than he anticipates
 as his investigation goes forward & proves
 that - Wiley is correct
 he will disappear Court.



David B. Brinkman
 Watkins Lumber & Stave Co.
 P.O. Box



Aug -
 1911

Leon J. C. Brinkman

Bill in W.C. Bank

Certified Copy of the Filed - Cont. File -

File - Baker - 3/25/11 - 1/2 of Dollars - 100 -
 960-4439

(Certified Copy) - 20-30 - 1/2 -

Robert
 1/2

1/2

1/2

1/2

1/2

1/2

1/2

1/2

1/2

PAGE 1

18

August 4th 1980 - AIRPORT DRUG Bust

between
these
two
dates

~~Wiley~~
CONTACTED BY CARROLL INGRAM TO PUT
JUDGE NIXON IN OIL DEAL

NOVEMBER 19th 1980 - PLEA BARGAIN - DREW 1 U. S. AtFEBRUARY 26th 1981 - Wiley Signed 3 Oil Deeds
to JUDGE NIXONAUGUST 26th 1981 - DREW INDICTED by Mississippi
Wiley CALLED by BUD Holmes
to Hire Bill Porter.JANUARY 12th 1982 - Drew given 2 minutes
to PLEAD Guilty

PAGE 2

OCTOBER 12th 1982 - PILOT WATKINS PICKED UP IN FLORIDA - THIS IS 2nd TIME PILOT HAS BEEN PICKED UP.

Visit from BOB ROYALS AFTER HE AND BILL PORTER HAD BEEN TO MAXWELL AIR FORCE BASE TO VISIT JOE KROHN.

between
these
two
dates

Wiley CALLED CARROLL INGRAM TO HAVE JUDGE NIXON VISIT HIM AND CARROLL BROUGHT JUDGE OUT TO WILEY'S OFFICE.

[Wiley RECEIVED CALL FROM JUDGE NIXON AND BUD HOLMES ABOUT 7:20 p.m.]

DECEMBER 23rd 1982 - ON motion of District Attorney's Office JUDGE WELDY PASSED DREW'S CASE TO THE FILES.

PAGE 3

JANUARY 26th 1983 - Motion by Bud Holmes +
Re-instate Drew's CASE.
JUDGE DICKIE McKENZIE
ORDERED Drew's CASE Re-insta:

JANUARY 26th 1983 - PILOT WATKINS: ENTERED,
Plea of NOT Guilty AND WA.
RELEASED ON \$100,000 BOND

NOVEMBER 4th 1983 - Bill PORTER MISSING

APRIL 6th 1984 - DREW'S CASE BROUGHT UP
AGAIN BY JUDGE McKENZIE.
WILEY CALLED JOHN BALTAR
TO TALK TO GEORGE PHILLIPS.

PAGE 4

July 18th 1984 - Wiley testified before
Grand Jury. DREW HAS
STILL NOT BEEN SENTENCED
AND JUDGE NIXON STILL ON
BENCH. Wiley is still
Subject to Power of Force.
County Judge, District Atty
AND JUDGE NIXON. Wiley
IS SCARED FOR SON.

September 6th 1984 - Wiley Indicted

1981 - Call to Audrey - (from New Haven)
Not making good business - Senate - hasn't
been in office in weeks - all people in office
dissatisfied way things being run

8-30-84 - Haines returns in Lake City

11-19-84 - Subjunctive served on Henry in U.S.

11-15-84 - Charles Ledyard - Parker Bought Judge's worthiness in

11-14-84 - Subjunctive served in Lake City

11-4-84 - Subjunctive served in Lake City

11-7-84 - Subjunctive served in Lake City

7-18-84 - W. Fancher Ledyard?

7-18-84 - W. Fancher Ledyard?

7-14-84 - W. Fancher Ledyard?

-)

①

7-23-80 CESSNA Leased by RICHARD BURNS,
W. Palm Beach Vet.

7-28-80 CESSNA Stolen

8-24-80 ✓ Airtaxi for HATTIEBUCK - from
S. Dixie, 1141 S. 1st - Robert Walker as
in front of house

9-3-80 J. Walker drove to ...

11-19-80 ✓ Plea Bargain with Drew & U.S.A.

(2)

2-26-81 ✓ Wiley Signed Deeds Dated 2-25-80

4-6-81 Covington County & Marion County Deeds Recorded

8-26-81 ~~Dickie Watkins indicted for Forestry County~~
 C-Plea Not Guilty - Robert Watkins Indicted
 in Forestry County -

9-3-81 Jackie Welby gave order by Agreement of D.A. (Katie Mathews
 and Bill Porter - they waived reading of Indictment.

11-18-81 Jackie Welby Set Trial for 1/12/82

12-29-81 ★ Watkins picked up at Dallas - Ft. Worth

(3)

-12-82 ✓ Draw G on 2 minutes to Dead
Gaily - Plus Gaily Sentence deferred to 3-19-82

3-19-82 - Bill Porter Said Draw III (BACK) Sentence deferred to July Term
6-25-82 - (BACK) Sentence Set off until AUGUST Term
9-12-82 - Sentence Set off until November Term

10-12-82 * WATKINS Picked up in Florida

10-19-82 MAGLE County Deed Recorded

1-12-82 L. S. visit to W.K.F.C.

1-15-82 * WATKINS Apprehended in Florida; Mississippi is
Going to Extradite - Case continues indefinitely

②

1-22-82

Joe Krown transferred from Maxwell
Air Force Base to work Release-Pascagoula

12-23-82

ON Verbal Motion of State on Order of JACK
Welby passed case to files for Reasons
Co-Defendant (Watkins) unable to be returned to State of Miss.
Despite efforts - Drew has agreed to Cooperate with State of Miss.
He has Co-op with State of Miss., Bureau of Narcotics & Federal Gov

1-26-83

Motion by Bud Holmes to Re-instate - States that Co-Defendant (Watkins)
had never been apprehended - Drew was willing to testify at that time.
Watkins had been picked up under jurisdiction of State of Miss. Courts.

1-26-83

Order by D. Mikomic to Re-instate trial of Anderson
Fairchild because Co-Defendant now back in State
& Set for March '83 Term

1-26-83

Robert Lemmon Watkins, represented by H. Lee Bauman
entered a plea of Not Guilty - ^{From Day} Released on \$100,000 Bond
posted by Delta Bonding Co. - 1507 Hardy St.
H. Lee Bauman
J. David Hays
Att. Flor. Bar
445-2314

(5)

3-18-83

Motion for change of Venue by Watkins through
Bauman due to extensive pre-trial publicity AND
the rising controlled substance arrest in Forest
County - the media making the public aware of
those kinds of crimes - Especially WDAW TV &
the Clarion Leader of Jackson.

4-11-83

D. McKenzie entered order for motions to be
filed by April 22, 83 & ordered Watkins to
Associate Local Council & motions to be heard
on that day.

4-11-83

Trial date set for 5-23-83.

4-21-83

By order D. McKenzie changed the motion
for May 23, 83 & Trial for May 30th, 83

2

5-4-83

Watkins, through Truman made motion
for continuance

5-9-83

D. McKenzie continued trial to a later date.

10-19-83

D. McKenzie CHANGED VENUE to Harrison
County for trial 12-12-83 on the matter,
but venue to remain in this court until
11-30-83 (Date of motions).

11-4-83

Bill Porter missing

11-22-83

D. McKenzie ordered Richard Waltman & Delta Bonding
G. & Robert Watkins to show cause why judgment on bond
should not be made & ordered the arrest of WATKINS.

⑦

11-30-83

Victor Lee / DeLoe Bonding Co. was served to
appear on 1-1-84 to show cause why judgement
should not be

12-19-83

D. McKenzie Served Fugitive Warrant &
continued case for this term on motion of D.A.

12-28-83

Hallet & Sherry Attys - motion by Watkins through Atty
Sherry of Riley: that they set aside Bond forfeiture
& Re-admit him to bail, because Brumman did not
advise trial date of 11/21/83; it is his intention
to appear in HARRISBURG & obtain council, but does
not want to be incarcerated

1-4-84

Final Judgement on Bond of Watkins

1-24-84

Jolly Matthews had Drew's case continued

3-12-84

D. McKenzie continued case until court could
get Robert Watkins

3

- 3-19-84 - Milton Schlinger continued Draw's case for Bill Porter.
- 3-19-84 - Carroll Ingram continues Draw's case
- 3-19-84 - D. M. Kenzie continues for this termination of D.
- 4-6-84 - Judgment against Robert Watkins; George Hitt dba Delta B
 + Revoked Hitt's License
- 4-19-84 - Order by George Date - Revoking License - Providing that
 Hitt Bond filed with Insurance Commission \$10,000.
 be paid to Forrest County. (on 8-19-82 - Hitt transfer
 to Comm. of Ins. a \$10,000 CB. Peoples Bank of Miss. Jackson
 Dat. 7/30/82 to mature 1/30/85)
- 4-20-84 - Letter from George Date to Circuit Clerk of
 Forrest County transferring \$10,000 CB.
- 5-1-84 - Karl Kopper Representing Draw & D.A. White
 Representative State of Miss continues for term.

7-20-84

Nixon Appointed before Grand Jury

7-31-84

Draw to D. M. McKenzie for
Sentencing

8-3-84

McKenzie continues to November '84

Term

9-5-84

Rodney Test, Geo

9-6-84

Wiley Insects - Pleasing Insect

TRANSMIT VIA:

☒ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☐ Immediate
☒ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date 11/2/84

20

FM JACKSON (58B-109) (P)

TO DIRECTOR (58-11332) PRIORITY ✓

ATTN: SUPERVISOR DENNIS AIKEN

PUBLIC CORRUPTION UNIT

BT

UNCLAS

WALTER LOUIS NIXON, JR., CHIEF U. S. DISTRICT COURT JUDGE, SDM,
 BRIBERY - U.S.D.C. - PUBLIC CORRUPTION; OO: JACKSON.

RE JACKSON TELETYPE TO THE BUREAU, DATED OCTOBER 18, 1984.

THE FOLLOWING IS A SUMMARY OF PERTINENT EVENTS IN THIS MATTER TO DATE:

ON OCTOBER 30, 1984, MS. ATTORNEY GENERAL ED PITTMAN CONTACTED JACKSON SAC, STATING HE HAD BEEN VISITED AT HIS RESIDENCE ON OCTOBER 28, 1984, BY JOHN BALTAR. (BALTAR IS A LONG TIME FRIEND AND ASSOCIATE OF WILEY FAIRCHILD, THE HATTIESBURG, MS., BUSINESSMAN WHO HAS BEEN INDICTED IN THIS CASE ON A CHARGE OF FURNISHING SUBJECT NIXON A GRATUITY AND PERJURY OF HIS GRAND JURY TESTIMONY.)

2 - JACKSON
 KMS:mc
 (1) *mc*

58B-109-3
 Searched _____
 Serialized *FAV*
 Indexed *FAV*
 Filed *6*

Approved: *W.H./Jm* Transmitted 003 0765Z Per *KLT*
 (Number) (Time)

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W.H. - Jm - Jm

FBI

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- ☐ Immediate
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☐ UNCLAS E F T O
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Date _____

PAGE TWO UNCLAS JN 58B-109

ACCORDING TO ATTORNEY GENERAL PITTMAN, BALTAR RELATED TO HIM THAT FAIRCHILD HAS BECOME DISENCHANTED WITH THE LEGAL ADVICE BEING PROVIDED BY HIS ATTORNEYS IN CONNECTION WITH HIS RECENT INDICTMENT AND HE REQUESTED THAT ATTORNEY GENERAL (AG) PITTMAN ATTEMPT TO INTERCEDE WITH JACKSON SAC ON BEHALF OF FAIRCHILD. AG PITTMAN STATED ^{BALTAR} ~~BALTAR~~ CLAIMS FAIRCHILD COULD HAVE SIGNIFICANT INFORMATION WHICH HE WOULD LIKE TO FURNISH TO THE FBI IN EXCHANGE FOR AN UNSPECIFIED "DEAL." AG PITTMAN STATED JOHN BALTAR WISHED TO PERSONALLY DISCUSS THE MATTER WITH JACKSON SAC.

ON OCTOBER 30, 1984, JOHN BALTAR TELEPHONICALLY CONTACTED JACKSON SAC, STATING HE WAS AWARE THAT JACKSON SAC HAD BEEN PERSONALLY CONTACTED BY AG PITTMAN IN BEHALF OF FAIRCHILD. BALTAR INDICATED FAIRCHILD IS SEEKING IMMUNITY FROM PROSECUTION BY THE FEDERAL GOVERNMENT BECAUSE OF HIS INVOLVEMENT WITH SUBJECT NIXON AND "OTHERS." BALTAR RELATED THAT FAIRCHILD HAS RECEIVED "BAD ADVICE" FROM HIS ATTORNEYS WHO HAD COUNSELED HIM AGAINST COOPERATING FULLY WITH THE U. S. GOVERNMENT IN THIS MATTER AND HAD APPARENTLY BEEN ASSURED BY HIS ATTORNEYS THAT THE FEDERAL GOVERNMENT DID NOT HAVE A SOLID PROSECUTABLE CASE AGAINST FAIRCHILD. BALTAR STATED FAIRCHILD NOW REALIZES THAT THE FEDERAL GOVERNMENT DOES, IN FACT, INTEND TO PROSECUTE HIM IF HE FAILS TO COOPERATE FULLY WITH THE

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(Time)

Per _____

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- ☐ Immediate
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☐ Routine

CLASSIFICATION:

- ☐ TOP SECRET
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☐ UNCLAS

Date _____

PAGE THREE UNCLAS JN 508 109

ONGOING INVESTIGATION. FAIRCHILD IS NOW WILLING TO EXTEND FULL COOPERATION AND WOULD BE WILLING TO TESTIFY. BALTAR ADVISED JACKSON SAC THAT IT WAS HIS HOPE THAT IN RETURN FOR FAIRCHILD'S COOPERATION, THE FEDERAL GOVERNMENT WOULD DISMISS ALL CHARGES AGAINST HIM. BALTAR WAS ADVISED BY JACKSON SAC THAT SUCH DECISION WAS SOLELY UP TO THE U. S. DEPARTMENT OF JUSTICE ATTORNEYS HANDLING THE CASE.

ON NOVEMBER 1, 1984, A MEETING WAS HELD IN JACKSON BETWEEN FAIRCHILD, BALTAR, FAIRCHILD'S ATTORNEY, WALLACE GUNN, JACKSON SAC, AND U. S. D. J. PUBLIC INTEGRITY SECTION ATTORNEYS REID H. WEINGARTEN AND MARSHALL JARRETT.

DURING THE LENGTHY CONFERENCE, A PROFFER WAS MADE BY FAIRCHILD ATTORNEY TO COOPERATE WITH THE FEDERAL GOVERNMENT IN THIS INVESTIGATION WHICH WAS TAKEN UNDER CONSIDERATION BY U.S.D.J. ATTORNEYS. FAIRCHILD THEREAFTER FURNISHED A SMALL AMOUNT OF INFORMATION CONCERNING INSTANT INVESTIGATION. IN THAT HE ADVISED DURING DECEMBER OF 1982, HE WAS TELEPHONICALLY CONTACTED BY FORMER FORREST COUNTY, MS., DISTRICT ATTORNEY PAUL "BUD" HOLMES AND SUBJECT NIXON, WHO WAS ON AN EXTENSION PHONE WITH HOLMES, DURING WHICH CONVERSATION THEY DISCUSSED THE HANDLING OF FAIRCHILD'S SON'S, DREW FAIRCHILD'S, CASE. (IF THIS INFORMATION COULD BE VERIFIED ACCORDING U.S.D.J.

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

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☐ Routine

Date _____

BALTAR ADVISED HE WOULD RELAY THAT MESSAGE TO ATTORNEY GUNN AND FAIRCHILD; HOWEVER, HE FELT THAT FAIRCHILD DEFINITELY DOES NOT FEEL HE EVER DID ANYTHING WRONG IN FURNISHING THE GRATUITY EVEN THOUGH HE KNOWS IT TO BE AGAINST THE LAW. HE FEELS IT WOULD BE AGAINST FAIRCHILD'S PRINCIPLES TO PLEAD GUILTY IN ANY COURT WHEN HE PERSONALLY FEELS HE DID NOT COMMIT A CRIME.

Approved: _____ Transmitted _____ Per _____
(Number) (Time)

FD-36 (Rev. 5-22-64)

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☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS

Date _____

PAGE FIVE UNCLAS JN 58B-109

IT IS ANTICIPATED THAT FAIRCHILD'S ATTORNEYS WILL BE IN CONTACT WITH U.S.D.J. ATTORNEYS REGARDING THE ABOVE PROPOSAL WITHIN THE NEXT WEEK. IN THE MEANTIME, JACKSON IS PREPARING FOR TRIAL IN THIS MATTER NOW SCHEDULED FOR DECEMBER 3, 1984.

BT

003

NNNN

Approved: _____ Transmitted _____ Per _____
 (Number) (Time)

1. At the time Mr. Fairchild testified before the Grand Jury and at trial, he believed prosecutor Reid Weingarten had made an informal agreement to dismiss the gratuity charge to which he had pled guilty if Reid Weingarten became convinced that there was no connection between the oil and gas transaction with Judge Nixon and the Drew Fairchild drug case in State or Federal Court. That this understanding by Mr. Fairchild was based upon an informal agreement which was conveyed to him by Reid Weingarten directly and through Mr. Fairchild's attorney, Barry Hess.
2. That Reid Weingarten, prior to the trial of Judge Nixon, promised the witness Wiley Fairchild that he would assist him in obtaining a pardon after the Nixon case was finally disposed of.
3. That prior to the Nixon trial, Mr. Fairchild's company was notified that because of his conviction his company could no longer bid on Federal contracts. That Reid Weingarten promised to assist Mr. Fairchild in obtaining an exception to that disbarment.
4. That in November 1984 at the time Mr. Fairchild was negotiating for a plea agreement, Mr. Weingarten, as part of his plea agreement, promised Mr. Fairchild he would do what he could to help his son, Drew; that in the Spring of 1985, Mr. Weingarten fulfilled his obligation by having Drew Fairchild indicted at the request of the attorney for Drew Fairchild, Barry Hess, in an effort to block the State Court prosecution of Drew Fairchild and obtain a more lenient sentence in Federal Court. That at that time, Mr. Weingarten promised Wiley Fairchild that he would make no recommendation on Drew's sentence to the Court at the time of his sentencing in the event Drew pled guilty.
5. That prior to Judge Nixon's trial, prosecution witness Wiley Fairchild was told by Reid Weingarten that, if asked whether he was being truthful with Skip Jarvis during two (2) conversations which were, without Mr. Fairchild's knowledge, being recorded that Mr. Fairchild was to answer by stating that he was not being truthful with Jarvis during those conversations and was telling Jarvis what he wanted him to hear.
6. That the Government withheld its internal memorandum dated March 22, 1985 (Petitioner's Ex. 5), reflecting the deal with Drew Fairchild and the primary motivation of the prosecution in making that deal; and that upon specific inquiry by Mr. Fawer prior to trial, Fawer instead received Reid Weingarten's letter dated January 7, 1986 (Petitioner's Ex. 7).

Page Two

7. That at the time Mr. Fairchild testified before the Grand Jury on November 28, 1984, he had been given a prepared list of crucial dates relevant to his testimony and key incriminating points of testimony were highlighted for him to study and rehearse prior to that testimony. (Petitioner's Ex. 18) That this document was prepared by John Baltar at the request of Reid Weingarten to keep Mr. Fairchild "on track" on testimony concerning events regarding which either Mr. Fairchild had no recollection or a different recollection.
8. That prior to Judge Nixon's trial, Mr. Weingarten, on several occasions, visited Mr. Fairchild to prepare him for his testimony against Judge Nixon. That during one just meeting between John Baltar, Wiley Fairchild and Reid Weingarten, Mr. Weingarten told Mr. Baltar and Mr. Fairchild what questions he was going to ask and what answers were expected. At the end of this conference, Mr. Fairchild instructed Mr. Baltar to copy verbatim Mr. Weingarten's questions and answers from his note pad and have them typed for Mr. Fairchild to study. (Petitioner's Ex. 1) That Mr. Fairchild studied Petitioner's Ex. 1 with Mr. Baltar and by himself while waiting to testify and at the time he testified, he had Petitioner's Ex. 1 in his coat pocket. That Petitioner's Ex. 1 contained incriminating testimony regarding which Mr. Fairchild either had no recollection or had a different recollection.
9. That Mr. Fawer was not provided a copy of Petitioner's Ex. 20, an internal FBI communication concerning statement made by Mr. Fairchild.

C. VALUE

D. PROSECUTED FOR THIS:

GRATUITY

PERJURY TO BE DISMISSED

SENTENCING NEXT MONTH

DEAL ON SENTENCE

IV CALL & VISIT

Did you tell anybody about call?

V McKENZIE VISIT

Testimony

I INTRODUCTION

II DREW'S CASE

A BUST

B DREW goes to ~~BUD~~ ^{George Phillips}

C. While BUD HAS CASE
DELAY

PUBLICITY
efforts to get \$ — ^{Porter}
 — ^{Royals}
 — ^{Drew}

ALL THIS: ANGER

D DO what? Call NIXON
Why? OWED A FAVOR

III LEASES:

A. DESCRIBE DEAL

B. DOCUMENTS MANIPULATED

Feb 25, 1960

backless Deak

Aug 4, 80

BUST

Feb 25 1981

DEEDS DRAWN

Summer 1982

Dec 29, 1982

ASO

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA	)	
	)	CR. No.
v.	)	Violations:
	)	18 U.S.C. §201(g) (Gratuity)
WALTER L. NIXON, JR.	)	18 U.S.C. §1623 (Perjury)
	)	

INDICTMENT

The Grand Jury charges:

COUNT I

1. At all times material to this Indictment:

(a) The Detendant, WALTER L. NIXON, JR., was a United States District Court Judge in the Southern District of Mississippi.

(b) Wiley Fairchild was a businessman living in Hattiesburg, Mississippi.

(c) Paul H. "Bud" Holmes was an attorney in Hattiesburg, Mississippi and from January 1980 until January 1984, he served as the District Attorney for Mississippi's 12th District and had his office in Hattiesburg, Mississippi.

(d) Drew Fairchild was Wiley Fairchild's son and in August 1981 he was indicted by the State of Mississippi and charged with participating in a drug smuggling conspiracy at the Hattiesburg Airport in August 1980.



- 2 -

(e) Carroll Ingram was an attorney in Hattiesburg, Mississippi and represented Wiley Fairchild.

2. On or about February 25, 1981, the exact date being unknown to the grand jury, in the Southern District of Mississippi, the Defendant, WALTER L. NIXON, JR., unlawfully and knowingly did, directly and indirectly, accept, receive, and agree to receive things of value for himself otherwise than as provided by law for the proper discharge of his official duties; to wit, royalty interests in three wells, from Wiley Fairchild, for and because of official acts to be performed by the Defendant, WALTER L. NIXON, JR., in the future in matters of interest to Wiley Fairchild.

3. As part of said unlawful activity:

(a) The Defendant, WALTER L. NIXON, JR., made an initial request to Carroll Ingram that the Defendant, WALTER L. NIXON, JR., be placed in an oil and gas investment with Wiley Fairchild;

(b) The Defendant, WALTER L. NIXON, JR., subsequent to the initial request referred to in the previous paragraph, frequently and persistently urged Carroll Ingram to see to it that the Defendant WALTER L. NIXON, JR., was placed in an oil and gas investment with Wiley Fairchild;

(c) The Defendant, WALTER L. NIXON, JR., received mineral royalty interests from Wiley Fairchild worth far more than any consideration the Defendant, WALTER L. NIXON, JR., agreed to pay for the interests;

- 3 -

(d) The Defendant, WALTER L. NIXON, JR., knew about and acquiesced in the backdating of the mineral royalty interests so as to make it appear that the Defendant, WALTER L. NIXON, Jr., had received oil and gas interests from Wiley Fairchild one year earlier than he actually had;

(e) The Defendant, WALTER L. NIXON, JR., knew about and acquiesced in the backdating of three promissory notes totalling \$9,500 and made payable from the Defendant, WALTER L. NIXON, JR., to Wiley Fairchild so as to make it appear that the Defendant, WALTER L. NIXON, JR., had agreed to pay Wiley Fairchild \$9,500 for the mineral royalty interests more than a year earlier than the time when the notes were actually prepared;

(f) The Defendant, WALTER L. NIXON, JR., advised Wiley Fairchild after receiving the mineral royalty interests that he would help Fairchild any time he could;

(g) The Defendant, WALTER L. NIXON, JR., paid off the three promissory notes totalling \$9,500 to Wiley Fairchild only after receiving royalty payments of larger amounts from Wiley Fairchild; and

(h) The Defendant, WALTER L. NIXON, JR., to date has received over \$60,000 in mineral royalties from still-producing wells given to him by Wiley Fairchild.

In violation of Title 18 United States Code 201(g).

- 4 -

COUNT II

1. Paragraph One of Count I is herein realleged and incorporated as if set forth in full herein.

2. On or about July 18, 1984, in Forrest County in the Hattiesburg Division of the Southern District of Mississippi, the Defendant, WALTER L. NIXON, JR., having duly taken an oath that he would testify truthfully in proceedings before a duly constituted grand jury of the United States, did knowingly and contrary to said oath make false material declarations as hereinafter set forth.

3. At the time and place set forth in paragraph two, the grand jury of the United States District Court for the Southern District of Mississippi was conducting an investigation into allegations of official corruption in the Southern District of Mississippi and as part of that investigation was examining, among other things, a) the circumstances of the transfer of mineral royalty interests from Wiley Fairchild to the Defendant, WALTER L. NIXON, JR., and b) the handling of the drug smuggling case involving Drew Fairchild by Paul H. "Bud" Holmes, then the District Attorney for Mississippi's 12th Judicial District.

4. It was material to the grand jury's investigation to determine:

(a) Whether or not the Defendant, WALTER L. NIXON, JR., discussed the drug case involving Drew Fairchild with Wiley Fairchild;

- 3 -

(b) Whether or not Wiley Fairchild asked the Defendant, WALTER L. NIXON, JR., to influence the handling of his son's case by interceding on his behalf with Paul H. "Bud" Holmes;

(c) Whether or not the Defendant, WALTER L. NIXON, JR., discussed the drug case involving Drew Fairchild with Paul H. "Bud" Holmes; and

(d) Whether or not the Defendant, WALTER L. NIXON, JR., sought to influence Paul H. "Bud" Holmes' handling of the Drew Fairchild drug case because the Defendant, WALTER L. NIXON, JR., had received mineral royalty interests from Wiley Fairchild.

5. At the time and place set forth in paragraph two, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declarations to be false:

Q. Did Wiley Fairchild ever discuss the case with you?

A. No, not to the best of my recollection. I think I would recall that if he had, believe me, but I don't recall that he ever did.

Q. And accepting your answer as you state it, I need to ask the follow-up questions.

A. Very well.

Q. Did Wiley Fairchild ever ask you to do anything vis-a-vis his son's case?

A. Absolutely not.

- 6 -

6. The underscored material declarations made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as set forth in paragraph five of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew and believed, were false in that (1) the Defendant, WALTER L. NIXON, JR., had discussed Drew Fairchild's drug smuggling case with Wiley Fairchild; (2) the Defendant, WALTER L. NIXON, JR., had recalled those discussions with Wiley Fairchild at the time he testified before the grand jury; and (3) Wiley Fairchild had asked the Defendant, WALTER L. NIXON, JR., to help him with his son's drug case by influencing Paul H. "Bud" Holmes.

In violation of Title 18, United States Code, Section 1623.

COUNT III

1. Paragraph one of Count I and paragraphs two through four of Count II are herein realleged and incorporated as if set forth in full herein.

2. At the time and place set forth in paragraph two of Count II, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following questions and gave the following answers, knowing the underscored material declaration to be false:

Q. The grand jury has heard evidence that the prosecutor, the state prosecutor, who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?

A. Very good friend of mine, long time friend, yes.

- 7 -

Q. Did he ever discuss the Drew Fairchild case with you?

A. No, not to the best of my recollection.
I think I would recall if he had.

3. The underscored material declaration made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as set forth in paragraph two of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew and believed, was false in that Bud Holmes and the Defendant, WALTER L. NIXON, JR., had discussed Drew Fairchild's drug smuggling case.

In violation of Title 18 United States Code, Section 1623.

COUNT IV

1. Paragraph one of Count I and paragraphs two through four of Count II are herein realleged and incorporated as if set forth in full herein.

2. At the time and place set forth in paragraph two of Count II, the Defendant, WALTER L. NIXON, JR., appearing as a witness under oath before the grand jury, was asked the following question and gave the following response, knowing the underscored material declarations to be false:

MR. WEINGARTEN:

All right. Judge, do you have anything you want to add?

THE WITNESS:

Yes, I do.

I want to say this. I-- Here (indicating) are your notes too, copies of your instruments, rather.

- 8 -

I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other federal grand jury that's sitting at this time. I have nothing at all to-- had nothing to hide or nothing to withhold and I brought everything that you have asked me to bring.

And I want to say this. That I've been told and led to believe and read in the newspaper and heard on the news media, so much about this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning.

I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where-- someone told me maybe Judge Russell handled one of the other defendants also and-- but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction.

So I want to say that because I understand that's what this is all about. The investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

3. The underscored material declarations made under oath before the grand jury by the Defendant, WALTER L. NIXON, JR., as

- 9 -

set forth in paragraph two of this Count, as the Defendant, WALTER L. NIXON, JR., then and there well knew, were false in that the Defendant, WALTER L. NIXON, JR., did have something to do with the Drew Fairchild drug case as he had sought to influence the case by asking state prosecutor Paul E. "Bud" Holmes to do what he could for Drew Fairchild and thereby handle the case in a way that would please Wiley Fairchild.

In violation of Title 18, United States Code, Section 1623.

A TRUE BILL:

FOREMAN

REID H. WEINGARTEN

Trial Attorney
Public Integrity Section
Criminal Division
Department of Justice
Washington, D.C. 20530
(202) 724-6974



U.S. Department of Justice

RHW:JNL:ab
186-41-169

Washington, D.C. 20530

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 100-10

Barry Hess, Esq.
 Hess, Atchison & Horne
 301 St. Joseph Street
 Post Office Box 1706
 Mobile, Alabama 36633

Dear Mr. Hess:

As you know, your client, Wiley Fairchild, made a proffer to the United States in connection with plea negotiations on November 1, 1984. We have evaluated that proffer and we have concluded that Mr. Fairchild is making a good faith effort to cooperate with the Government. If a plea agreement is reached between Mr. Fairchild and the United States consistent with the terms set in New Orleans and memorialized in a separate document (attached hereto), we would expect continuing cooperation from Mr. Fairchild, including complete and truthful testimony before the Grand Jury and at any and all trials that may follow from this investigation. In the event that we conclude (and it would be solely our determination) that such cooperation has been and is forthcoming, we would recommend to the sentencing judge that a prison sentence is not warranted in this case. If we conclude that the cooperation from Mr. Fairchild is not complete in any manner, we would be free, of course, to modify our recommendations. I know you understand as well that the sentencing Judge would not be obliged to follow our recommendations.

Sincerely,

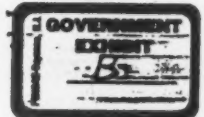
Reid H. Weingarten
 Reid H. Weingarten
 Trial Attorney
 Public Integrity Section
 Criminal Division

Enclosure

A TRUE COPY, I HEREBY CERTIFY.
 Clarence A. Pierce, CLERK

By:

[Signature]
 Deputy Clerk



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Hattiesburg Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	Crim. No. 84-0009
WILEY FAIRCHILD,	)	
	)	
Defendant	)	

PLEA AGREEMENT

1. The defendant, WILEY FAIRCHILD, will plead guilty to Count I of the indictment (gratuity).
2. The United States will move to dismiss Count II of the indictment (perjury).
3. The United States will make known to the sentencing court any and all cooperation that Wiley Fairchild provides.
4. The United States retains the right to allocute at sentencing.
5. Wiley Fairchild will not be prosecuted by the United States for any offense the facts of which are now known to the United States.

REID WEINGARTEN
Attorney for the United States

BARRY HESS
Attorney for the Defendant

JAN NIELSEN LITTLE
Attorney for the United States

WALLACE GUNN
Attorney for the Defendant

Dated this _____ day
of November, 1984

WILEY FAIRCHILD
Defendant



RECEIVED OF 2020

MAR 6 1985

Honorable Patrick J. Carr
United States District Judge
Eastern District of Louisiana
United States Courthouse
500 Camp Street, Room C-352
New Orleans, Louisiana 70130

Re: United States v. Fairchild
CR. No. 84-0009

Dear Judge Carr:

This letter is to provide you with an interim report of the cooperation provided to the United States government by Wiley Fairchild.

As you know, Mr. Fairchild was indicted by the Grand Jury sitting in Hattiesburg, Mississippi, on September 6, 1984, in a two-count indictment charging violations of 18 U.S.C. §201(f) (gratuity) and §1623 (perjury). The indictment charged that on February 25, 1981, Mr. Fairchild paid Judge Walter Nixon an illegal gratuity by transferring valuable mineral royalty interests to Judge Nixon. The indictment further charged that on July 18 and 19, 1984, Mr. Fairchild committed perjury before the grand jury in his description of some of the details of that transaction.

During the month of November, 1984, Mr. Fairchild, through his attorney Farry Hess of Mobile, Alabama, expressed to us a willingness to plead guilty and cooperate. On November 26, 1984, Mr. Fairchild pleaded guilty to the gratuity charge under the terms of a plea agreement which contemplates the dismissal of the perjury charge, in exchange for Mr. Fairchild's candid cooperation.

Since the entry of the plea, Mr. Fairchild has cooperated with the government. He testified before the Grand Jury on November 28, 1984. He appears to us to have made every effort to be forthright and truthful in his testimony. Certain of the information he provided during that testimony is among the most significant to have come to light to date in the investigation, and that information has been corroborated through several independent sources. In addition, Mr. Fairchild has made himself



- 2 -

available for informal interviews with government attorneys and agents of the Federal Bureau of Investigation. In all of our recent dealings with him, Mr. Fairchild has demonstrated a genuine spirit of cooperation, without any evidence of embellishment or elaboration beyond the facts he knows.

We anticipate that Mr. Fairchild's continued cooperation will be important to the investigation and that he may be asked to testify again. We will keep you apprised of the nature and quality of his cooperation and we will provide you with a complete account of his cooperation immediately prior to sentencing. Please call me at FTS 724-6974 if you have any questions in the meantime.

In accordance with our previous discussions we request that this report be sealed.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

cc: Barry Hess, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA - * CRIMINAL ACTION
VERSUS * NO. H-84-00009
WILEY FAIRCHILD *
* * * * *

Transcript of the Sentencing held in the above numbered
and entitled cause before the Honorable Patrick E. Carr,
presiding Judge on the 18th day of September, 1985.

APPEARANCES:

FOR THE GOVERNMENT:

Reid Weingarten
Jan Little
United States Department of Justice
P. O. Box 50168
F Street Station
Washington, D.C. 20004

FOR THE DEFENDANT, WILEY FAIRCHILD:

HESS, ATCHISON & HORNE
(BY: Richard Horne)
301 St. Joseph Street
P. O. Box 1706
Mobile, Alabama

REPORTED BY: ARLENE HOWARD, U.C.R.



P R O C E E D I N G S

THE CLERK:

Criminal Number

h-64-00009, United States of America versus Wiley Fairchild.

MR. HORNE:

Good morning, Your

honor. My name is Richard Horne. I am appearing on
behalf of my partner, Barry Hess and our law firm,
representing Mr. Fairchild in this matter.

MR. WEINGARTEN:

Good morning, Your

honor. I am Weingarten from the Justice Department along
with Jan Little representing the United States.

THE COURT:

Let the record reveal

Mr. Fairchild is present. You are, of course, Mr. Fairchild
and you are aware that you have the right to have this
sentence passed in the Southern District of Mississippi.
You have been advised in that several times in the past. Is
that correct?

MR. FAIRCHILD:

I am satisfied.

THE COURT:

And you will waive

any right you have to have the sentence imposed in the
Southern District of Mississippi and consent to the sentence
being imposed in New Orleans?

MR. FAIRCHILD:

Yes, Sir.

THE COURT:

Is the defendant ready

for sentencing?

1 MR. MORSE: Yes, Your Honor.
 2 THE COURT: Counsel, do you have
 3 anything to say on behalf of your client or in mitigation?
 4 MR. MORSE: Yes, Your Honor.
 5 THE COURT: Proceed.
 6 MR. MORSE: Judge, I want to
 7 thank the court for allowing me to appear on behalf of Mr.
 8 Fairchild and also thank you for Mr. Ness who, as you're
 9 aware, who is in trial in Seattle.

10 Now Fairchild has
 11 pled guilty previously and that matter is history. The
 12 crime with which he is charged is certainly a serious one
 13 and it strikes at the heart of our judicial system. As a
 14 lawyer I certainly appreciate that. I believe that Mr.
 15 Fairchild appreciates that. He did not have an anyway to
 16 say anything ~~about that~~ ~~guilty~~ ~~plea~~ ~~and~~ ~~he~~ ~~pleaded~~ ~~on~~ ~~all~~
 17 ~~these~~ ~~in~~ ~~that~~ ~~case~~.
 18 I want to bring
 19 to the court's attention, and I believe it is reflected in
 20 the pre-sentence investigation, that Mr. Fairchild's
 21 participation here was not the active seeking out of someone
 22 to influence and then influencing them, it is someone who
 23 came to him and sought favor or whatever from him. That
 24 appears to be the MO of the parties involved. And I believe
 25 that is reflected in the indictment or in the subsequent

1 incidents that have been brought in this case. His
2 acquiescence in this matter certainly does not in any way,
3 shape or form detract or diminish the guilty plea he has
4 entered.

5 I would like to
6 commend the Probation Office for the thorough pre-sentence
7 investigation that they have prepared in this matter and I
8 know that the Court will take my remarks in addition to the
9 pre-sentence investigation.

10 The thing, I suppose,
11 that I would like to share with regard to Mr. Weinkath is
12 that it has been my pleasure to know him for only a short
13 period of time. During that period of time I have been
14 impressed by several things. One is his conduct. The other
15 is his staunch belief. In my opinion, and I submit to the
16 Court, he has appreciated and does appreciate and will
17 continue to appreciate his error. I believe that his guilty
18 plea and his cooperation since that guilty plea speaks for
19 itself. I believe Mr. Weinkath can more adequately
20 address those matters than I can for he has certainly been
21 present at all those proceedings.

22 I would also like to
23 mention to the Court that having pled guilty he must be
24 sentenced, he must be punished and he appreciates that.
25 There are alternatives available to the Court in sentencing.

1 In his presentence investigation several of those matters
 2 are brought up. As you are aware Mr. Fairchild is a very
 3 wealthy man and the Court might be of the opinion that a
 4 fine would mean nothing to him. The Court is also aware
 5 of the numerous and extensive community service and education
 6 service he has provided to South Mississippi through grants,
 7 through gifts, scholarships and the like. And so the Court
 8 might be of the opinion that community service would not be
 9 a meaningful alternative. I can only ask the Court that it
 10 must, it must punish and it must feel that Mr. Fairchild
 11 understands in a meaningful way what he has done. But I ask
 12 the Court that because of his participation before in
 13 community service and the fact that he has made money not
 14 to rule out those alternatives.

15 I think to the Court
 16 looks to his cooperation, and he will tell us with his own
 17 words he is intent to continue to cooperate. And you can
 18 appreciate that perhaps like the woman in the movie and
 19 when he looked up out of the hole and he said, "My mind is
 20 right." I believe Mr. Fairchild has been touched. I hope
 21 the Court can see fit in it's wisdom to give him a sentence
 22 that does not demand incarceration.

23 Thank you, Your Honor.

24 THE COURT: Mr. Fairchild, would
 25 you like to say anything in your own behalf?

MR. FAIRCHILD: Your Honor, - made a mistake. In so doing I violated the law of the United States. I am sorry. I have been cooperating with Mr. Weingarten and I pledge to continue cooperating. I have pled guilty to violating this law and I stand before this Court, Your Honor, ready to receive whatever sentence you impose. Thank you.

THE COURT:

A. W. WILKINSON.

12. ALLEGATIONS. Good morning, your
honor. Your honor, I think it can be said and said quite true
of the more interesting aspects of the Mississippi
investigation which has been a fascinating investigation
has been the opportunity to get to know and to get to work
with these persons.

people say that Wiley Rainchild is a brilliant man, a superb businessman. We have found that there is truth to that. People say that Wiley Rainchild is a simple, nice and cheerful man. We have found that there is truth to that. People say that Wiley Rainchild is an amazingly generous man. We will give thousands, tens of thousands of good wages with no expectation whatsoever for anything in return. We have found that there is truth to that. And people say that Wiley Rainchild is a major political power broker in Mississippi who will not

1 in his presentence investigation several of those matters
 2 are brought up. As you are aware Mr. Fairchild is a very
 3 wealthy man and the Court might be of the opinion that a
 4 fine would mean nothing to him. The Court is also aware
 5 of the numerous and extensive community service and education
 6 service he has provided to South Mississippi through grants,
 7 through gifts, scholarships and the like. And so the Court
 8 might be of the opinion that community service would not be
 9 a meaningful alternative. I can only ask the Court that it
 10 must, it must punish and it must feel that Mr. Fairchild
 11 understands in a meaningful way what he has done. But I ask
 12 the Court that because of his participation before in
 13 community service and the fact that he has made money not
 14 to rule out those alternatives.

15 I think to the Court
 16 looks at his cooperation, and he will tell us with his own
 17 words that he intends to continue to cooperate. And you can
 18 appreciate that perhaps like the woman in the movie and
 19 when he looked at out of the hole and he said, "My mind is
 20 right." I believe Mr. Fairchild has been changed. I hope
 21 the Court can see it in its wisdom to give him a sentence
 22 that does not demand incarceration.

23 Thank you, Your Honor,
 24 THE COURT: Mr. Fairchild, would
 25 you like to say anything in your own behalf?

MR. TALKGILL: Your Honor, I made a mistake. In so doing I violated the law of the United States. I am sorry. I have been cooperating with Mr. Weingarten and I pledge to continue cooperating. I have pled guilty to violating this law and I stand before this Court, Your Honor, ready to receive whatever sentence you impose. Thank you.

THE COURT:

..F. ..elbarten.

10. REINTEGRATION. Good morning, your honor. Your honor, I think it can be said, said that one of the more interesting aspects of the Mississippi investigation which has been a fascinating investigation has been the opportunity to get to know and to get to work with these individuals.

People say that Wiley Rainchild is a cunning man, a second businessman. We have found that there is truth to that. People say that Wiley Rainchild is a simple, safe and shrewd man. We can be assured by people who seek to take advantage of him. We have found that there is truth to that. People say that Wiley Rainchild is an amazingly generous man. He will give thousands, tens of thousands of good values with no expectation whatsoever for anything in return. We have found that there is truth to that. And people say that Wiley Rainchild is a major political power broker in Mississippi who will not

1 allow an election to go by without making a major impact
2 all to suit his own purposes. We have found that there's
3 truth to that. I guess what I'm saying, there is a complex
4 contradictory picture of this man that emerges. If a book
5 is ever written about the Mississippi investigation, and we
6 are told that at least some are in the offering, at least
7 two chapters should be devoted to Wiley Ralston.

8 what is not
9 contradictory, however, is Wiley Fairchild's role in the
10 investigation. As the Court well knows about a year ago
11 Mr. Fairchild was indicted and charged with two crimes,
12 paying of gratuity and lying in the grand jury, perjury.
13 As the Court well knows November last year Mr. Fairchild
14 entered a plea, the gratuity count in this courtroom.
15 before the which plea Mr. Fairchild made a motion to the
16 United States. In our view it confirmed the validity of
17 the indictment. I acknowledged being a witness to
18 gratuity, to Judge Nixon. I acknowledged lying in the
19 grand jury. And he gave us some facts and the facts simply
20 stated constituted the turning point of the investigation.
21 Mr. Fairchild advised us that he was dissatisfied with the
22 way his son was being treated in State Court. He advised
23 us because of the oil well deal, the mineral interest deal
24 he had with Judge Nixon he viewed Judge Nixon as owing him
25 a favor. He acknowledged to us that he contacted Judge

1 Nixon and asked Judge Nixon to do something about his son's
 2 case and he advised us that in fact Judge Nixon interceded
 3 with the District Attorney, Bud Holmes. Again, that
 4 information simply stated was the turning point of our
 5 investigation. We believe we corroborated it and we believe
 6 that it in fact led to the indictments of Bud Holmes and
 7 Judge Nixon.

8 Since that proffer
 9 Wiley Fairchild has been fully cooperative. He made
 10 himself and his staff available to us at all times. He was
 11 testifies in the grand jury with no hesitation. In advising
 12 the court, in our view, he made every effort to be truthful
 13 in the grand jury and was prepared to testify at Mr. Holmes'
 14 trial and he has advised that he is prepared to testify
 15 truthfully in any upcoming trial. It would be hard to
 16 overstate the value of Mr. Fairchild's cooperation in
 17 this investigation.

18 This cooperation in
 19 no way should trivialize the crimes he committed. The
 20 statutory Mr. Fairchild has likened it to a campaign
 21 contribution. He was in fact buying influence, good will
 22 to generate favors in the future. Analogizing a Federal
 23 Judge to a political candidate is frankly misleading to
 24 us. But I think perhaps Mr. Fairchild should get some
 25 benefit of the doubt, after all he is not a lawyer, not a

1 well educated man and perhaps in his view public officials
2 are public officials. Of course, in the view of an attorney,
3 an officer of the Court. It's an awful analogy to make.

4 The perjury, basically
5 Mr. Fairchild's explanation to that is that he was advised
6 not to tell the truth. It seems a prevailing theme in the
7 Mississippi investigation there's a lack of respect for the
8 oath. It seems that for a variety of reasons people have
9 simply come into the grand jury in Mississippi and lied.
10 It's our view that the oath is one of the pivots upon which
11 the entire justice system turns and we pledge to do everything
12 in our power to see that the oath is respected.

13 What does all this
14 mean in terms of sentence? We believe there is absolutely
15 no threat in the world that Mr. Fairchild will repeat this
16 conduct. We believe he is truly reformed. We understand
17 that he will tell the truth to the end. We believe that
18 Mr. Fairchild deserves credit for his help in this investiga-
19 tion. At the bottom, in our view, we believe justice will
20 be served without a jail sentence for Mr. Fairchild in this
21 case. We do hope that any sentence imposed by the Court
22 will underscore and affirm our abhorrence for the notion
23 that judicial influence is a commodity to be purchased. A
24 notion, frankly, that caused Mr. Fairchild to be in court
25 today. Thank you.

1 THE COURT:

2 MR. WALFORD, I have
3 given obviously a lot of thought to your sentencing. I had
4 a lot of time, it has been continued several times. I have
5 carefully reviewed all the material furnished to me which
6 includes a rather extensive review of your background, your
7 accomplishments which obviously are unique, and your concern
8 for and generosity to others has been quite commendable.

9 I am aware of your
10 conduct since your first appearance before the Grand Jury
11 and your present state of health. I have read much of your
12 testimony before the Grand Jury in connection with other
13 cases. From this testimony I observed your change in
14 attitude. I am not sure what motivated this change but it
15 was obvious that a change did in fact occur. It is my
16 observation that you may have very well have perceived the
17 importance of your prior actions and were seeking to make
18 amends. I would hope that you realize the importance of
19 our judicial system as it relates to the individual freedom
20 which we enjoy in this country. Without it we would be a
21 government of man rather than of laws which would most
22 certainly have a negative impact on individual freedom
23 affecting you, I, and everyone.

24 To act in a manner
25 abusive of the system can only contribute to the destruction
and consequent impairment of individual liberties.

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In the opinion of this Court there are three broad but extremely important factors which must be weighed at arriving at a decision as to what is an appropriate penalty to be imposed upon a person convicted of a crime. These are punishment, rehabilitation and deterrence. This Court is satisfied that your involvement and your realization of the seriousness of your situation has since inflicted sufficient punishment upon you. This Court further feels that there is no likelihood that you will ever again permit yourself to be drawn into any similar situation even if it involves a family member, which it did in this case. I realize that. Therefore, your rehabilitation and personal deterrence are not factors to be dealt with in your sentence. However, deterrence of others through public perception is still a factor that must be considered. This Court has concluded that it would not be in the public interest to permit you to walk through the system. Taking into consideration all the circumstances and everything that has been said by everyone it is therefore the judgment of this Court and this Court does hereby sentence you to serve two years in the

1 custody of the attorney general and pay a fine of \$10,000.00.
 2 Further this Court does hereby suspend one year and ten
 3 months of this sentence and place you on inactive probation
 4 for a period of three years to commence upon your release.

5 It is the recommendation
 6 of this Court that you serve this two months in the custody
 7 or incarceration at the Halfway House in Jackson, Mississippi.

8 You, of course, will
 9 be permitted to self-surrender. And it will be necessary
 10 that we fix a time at which you must surrender to commence
 11 this sentence. Counsel, do we have any suggestion as to
 12 the time? Consult with Mr. Fairchild. You may take a few
 13 minutes, if you like.

14 MR. MORNE: Your honor, we have
 15 been advised by the Probation Officer that it would be best
 16 to make the facility in Jackson aware that he is coming so
 17 we would like five days.

18 THE COURT: You can have longer
 19 than that.

20 MR. MORNE: Frankly, Mr. Fairchild,
 21 wanted to go in tomorrow night but we were advised they may
 22 need a little more notice than that.

23 THE COURT: What is the suggested
 24 date?

25 MR. MORNE: Monday.

1 THE COURT: Monday would be the
2 twenty-third. It will be necessary for you to sign the
3 self-reporting order, Mr. Fairchild, and your attorney.

4 (Mr. Fairchild and Mr. Horne comply)

5 THE COURT: What about the
6 dismissal of the other counts?

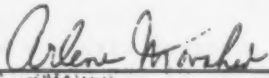
7 MR. WEINGARTEN: We formally move to
8 dismiss Counts, I think, two and three, the remaining counts
9 of the indictment.

10 THE COURT: The motion is granted.
11 Court stands adjourned.

12 (End of proceedings)

REPORTER'S CERTIFICATE

I, Arlene Novanek, Official Court Reporter, for the United States District Court for the Eastern District of Louisiana, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth and I do further certify that the foregoing transcript has been prepared by me or under my direction.


ARLENE NOVANEK
Official Court Reporter
United States District Court
Eastern District of Louisiana

U.S. Department of Justice

RHW:ab
186-41-169

Washington, D.C. 20530

MAR 5 1985

Honorable Glenn L. White
District Attorney, Forrest County
Post Office Box 866
Hattiesburg, Mississippi 39401

Dear Mr. White:

I am an attorney with the Public Integrity Section of the Criminal Division of the United States Department of Justice and I am supervising the federal grand jury investigation now underway in Hattiesburg. In that regard I have come to know Drew Fairchild, who I understand is scheduled for sentencing on March 8, 1985 before Judge McKenzie in one of your cases. I am writing to advise you of our relationship with Mr. Fairchild.

Drew Fairchild has cooperated with us in our work. His cooperation has included grand jury testimony that we believe to be truthful as well as his availability for less formal interviews that have proven valuable to the investigation. Because our grand jury investigation is both ongoing and extremely sensitive, we cannot get into the substance of Mr. Fairchild's cooperation at this time. It is fair to say that Mr. Fairchild's cooperation has been very useful to us and we expect it to continue to be useful in the future.

It is our preference that if this letter is to be submitted to the Court for purposes of sentencing that it be submitted under seal and not be made part of the public record.

Sincerely,

Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

Typed: 2/28/85
Records
Sec. Chron
Little (2) -
Weingarten





U.S. Department of Justice

RHW:JNL:ab
186-41-162

Washington, D.C. 20530

January 7, 1986

Mr. Michael S. Fawer
Fawer, Brian, Hardy & Zaczekis
700 Camp Street
New Orleans, Louisiana 70130

Re: United States v. Nixon
CR. NO. H85-00012(L)

Dear Mr. Fawer:

At our meeting on January 3, 1986, you stated that you understood that the federal government had made some sort of "deal" with Drew Fairchild prior to his federal indictment which included a resolution of his sentence in the state system. We responded that there was no federal plea bargain with Drew Fairchild, but that we would review our files to insure that there were no other favors or deals given to him. After reviewing our files we have the following information to report to you.

In 1984, Drew Fairchild began cooperating with the federal government in its investigation of the transactions between Wiley Fairchild and Judge Nixon, and in its investigation concerning the 1980 drug case. Drew's state sentence was continued several times during 1984, at his request, in part because of the federal investigation.

Drew Fairchild was scheduled to be sentenced in state court on March 8, 1985, and in contemplation of that, on March 5, I sent a letter to District Attorney Glenn White detailing Fairchild's cooperation. You have a copy of this letter.

On March 8, Fairchild's state plea agreement was vacated, Fairchild withdrew his guilty plea, and a trial date of May 13 was set for his state charges.

Shortly thereafter, Fairchild's attorney contacted us and requested that we proceed federally against Fairchild. No agreements, deals, or promises were made with this attorney.

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- 2 -

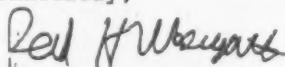
In mid-March, we decided to seek an indictment of Drew Fairchild. While the request of Fairchild's attorney was noted, it was but one of several factors weighing into the decision to recommend an indictment. The primary factor was our belief that by March, 1985, the drug case was a federal matter that could best and most fairly be handled in Federal Court. Fairchild was indicted on March 29, and he pleaded guilty on the same day. There was no plea agreement; he pleaded guilty to the entire indictment.

Fairchild's federal sentence was scheduled for July 11, 1985. Prior thereto, Fairchild's attorneys, the District Attorney, and Judge McKenzie apparently negotiated a deal regarding Fairchild's state sentence. While Fairchild's attorneys advised us of this development, we played no part at all in this deal.

After Fairchild reported to Federal prison he filed a Rule 35 motion, which we opposed and which was denied.

I believe this will answer your questions about our negotiations with Drew Fairchild.

Sincerely,



Reid H. Weingarten
Trial Attorney
Public Integrity Section
Criminal Division

cc: Honorable James H. Meredith
Chief United States District Judge
Eastern District of Missouri

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG, MISSISSIPPI

* * * * *
UNITED STATES OF AMERICA *
*
VERSUS *
*
REDDITT "DREW" FAIRCHILD *
* * * * *

CRIMINAL NO. 85-5 (H)

SENTENCING PROCEEDINGS
* * * * *

THE HONORABLE JOHN V. PARKER, CHIEF JUDGE OF THE MIDDLE
DISTRICT OF LOUISIANA, BATON ROUGE DIVISION, PRESIDING
* * * * *

THURSDAY, JULY 11, 1985
* * * * *

APPEARANCES:

REID H. WEINGARTEN, ESQ. : For the
Trial Attorney : United States of America
Public Integrity Section :
U. S. Department of Justice :

BARRY HESS, ESQ. : For the Defendant
AND :
WALLACE R. GUNN, ESQ. :



Helen Bazzell
Official Court Reporter
707 Florida Boulevard



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1 THURSDAY, JULY 11, 1985

2 (Reporter's Note: Proceedings were commenced at
3 9:00 a.m.)

4 THE COURT: Please be seated.

5 (Reporter's Note: The deputy courtroom clerk called
6 the case.)

7 MR. HESS: The defendant is present and we're
8 ready, Your Honor.

9 THE COURT: All right. Mr. Hess, your client is
10 before the court for sentencing this morning. Do you have
11 anything to say on his behalf, prior to imposition of
12 sentence?

13 MR. HESS: Yes, Your Honor; if I may have a
14 moment.

15 THE COURT: Yes, indeed.

16 MR. HESS: My client is fully aware of the serious-
17 ness of the violation for which he has pled guilty and stands
18 convicted of and for which he awaits sentence today. The
19 violation is of sufficient seriousness that Congress has
20 seen fit, in the intervening time, to increase the punishment
21 substantially for violation, from what it was at the time of
22 the offense when he committed it. I would call to the court's
23 attention that any custodial sentence that he may receive
24 today, in 1985, would be subject to much severer guidelines
25 imposed by the Parole Board from those that were in force in

1 1980, at the time the violation was committed, and I would
2 ask the court to please consider that. We have examined the
3 presentence that has been prepared and it's very extensive,
4 very accurate. As Your Honor knows, from an examination of
5 that presentence, my client has no significant record and
6 that there's been almost five years have passed, from the
7 time of the commission of the offense until today. And that
8 five years has shown that he is not a danger to society or a
9 danger to himself. This case, as Your Honor knows, has had
10 a unique history. The United States originally had juris-
11 diction of this case and this man had entered into a plea
12 agreement with the United States. And as part of that plea
13 agreement, he had, early on, back in 1980, admitted his guilt
14 of the offense charged. For reasons unknown to my client,
15 for reasons unknown to me, the parties representing the
16 United States at that time -- who, of course, are not the
17 United States Attorney that's before the court today -- saw
18 fit to relinquish that jurisdiction and to send this man's
19 case over to the state courts in Mississippi, where Mr. Bud
20 Holmes, at that time, was the District Attorney. There were
21 three people that, in marijuana traffic, would be called
22 "mules," strong backs. Back in 1980 and 1981, the United
23 States, forthwith, prosecuted those "mules" and sent them to
24 the penitentiary. Back in 1980 and 1981, the United States
25 took the distributor, one of the key men in the operation,

1 and saw fit to place him on probation because of his coopera-
2 tion against the "mules." One of the interesting aspects of
3 the history of this case, Your Honor, is that there were
4 three people that were treated differently from the head
5 distributor and treated differently from the "mules." One of
6 them is my client, who happens to be the son of a very
7 wealthy man. One of them was the head of the organization,
8 who happened to be a very experienced importer of controlled
9 substances. And one of them happened to be my client's
10 partner in the airport, who Your Honor sentenced yesterday,
11 Mr. Royals. Neither the United States nor the State of
12 Mississippi saw fit, back in 1980 or 1981, to investigate
13 Mr. Royals. Mr. Royals, Your Honor, has a history, a long
14 history, of close association with and the personal pilot of
15 Bud Holmes, who, at that time, was the District Attorney of
16 Forrest County. My client's case and that of the head of the
17 organization were sent to state court. The head of the
18 organization, Your Honor, was placed under a nominal bond
19 and he jumped bond. He was apprehended, brought back before
20 the states of Mississippi, placed under a nominal bond a
21 second time and jumped bond; was apprehended, brought back
22 before the state courts of Mississippi, placed under a
23 nominal bond a third time and jumped bond. He was appre-
24 hended in various jurisdictions, including Florida and Texas,
25 where the then District Attorney of Forrest County, Mississippi

1 Bud Holmes, somehow or other failed to process the necessary
2 paper work to bring him back to Mississippi, resulting in his
3 being released. So far as I know today, he is at large; he
4 is either dead or at large. He has never been brought before
5 any court, state or federal, for his role in these pro-
6 ceedings.

7 THE COURT: I assume you refer to Mr. Watkins?

8 MR. HESS: Yes, sir; Your Honor -- who was
9 ultimately indicted, along with my client, in federal court
10 this year. My client's family was leaned on for money, both
11 from the state court direction and from the federal court
12 direction. For the last five to -- five years -- and I in
13 no way diminish the seriousness of the offense -- but for
14 the last five years, my client and his family have been a
15 victim of the Criminal Justice System of the United States
16 and of the State of Mississippi. My client entered into a
17 plea bargain with the State of Mississi four years ago.
18 That plea bargain was that he would testify against Mr.
19 Watkins; that he would plead guilty -- which he did, four
20 years ago; that he would receive a five-year probationary
21 sentence and a five thousand dollar fine. That plea bargain
22 remained in force until -- I believe it was April of this
23 year; March or April. I'm not real certain of my date. I
24 am certain of this: That plea bargain remained in force
25 until Mr. Royals was indicted, at which time it became rather

1 public knowledge that my client was cooperating with the
2 prosecuting authorities of the United States. I cannot
3 stand here and tell the court the motives for which it was
4 rejected. But I can tell the court the chronological order
5 of events. Within two to three weeks after the Royals
6 indictment, this plea bargain, that had been in effect for
7 four years, was rejected by the court and the District
8 Attorney of Forrest County and the case was brought onto the
9 active list and set for trial.

10 THE COURT: What's the present status of the case?

11 MR. HESS: My client entered a plea of guilty
12 Monday, Your Honor. My client, in open court, was sentenced
13 to a three-year custody sentence in Mississippi; to a five
14 thousand dollar fine; and to the payment of costs of court,
15 which will approximate two thousand dollars. After the open-
16 court proceeding, my client, the court and the District Attorney
17 of Forrest County had an in-camera session where certain
18 matters were put on the record and they are fairly well
19 reflected in a letter that we wrote to the District Attorney
20 and delivered to him before the entry of plea in this matter.
21 And with the court's permission, I'd like to present this to
22 the court as an exhibit.

23 THE COURT: All right.

24 MR. HESS: I would suggest that it may or may not
25 be appropriate to have it sealed, so long as there are other

1 proceedings developing out of this: whatever is the court's
2 pleasure.

3 THE COURT: All right.

4 MR. HESS: May it please the court, I'm in one of
5 the most unique positions I've ever been in, in my twenty-
6 three years of practicing law. My client was indicted by
7 the United States, at my request. My client entered a plea
8 of guilty to the charge, on my advice. And I'm in the posi-
9 tion of asking the court to give him some custody sentence;
10 hopefully, minimal but some custody sentence. I call to the
11 court's attention again, as I said in the beginning, we
12 realize the seriousness of his transgression. However, I
13 believe his recent history of assistance to the United States,
14 not only in the investigation of the marijuana matter but in
15 the investigation of matters of far more importance. As
16 serious as the marijuana matter is, I submit to the court
17 it does not arise to the level of the questions of public
18 integrity, at the state level and at the federal level, that
19 is being investigated, very actively, at this moment in the
20 Southern District of Mississippi. I think my client has, by
21 his conduct in recent years, shown himself not only not to
22 be a threat to society but to be a rehabilitated citizen who
23 is contributing, in a very positive manner, to law and order
24 in our part of the country. And I thank you for this
25 opportunity.

1 THE COURT: All right, Mr. Hess, I'm not sure that
2 I fully comprehend precisely what is in this letter and I
3 think it may be advisable for us to confer in chambers and
4 perhaps have you explain it --

5 MR. HESS: Fine, Judge.

6 THE COURT: -- to me, prior to actually imposing
7 sentence. Mr. Weingarten, does the Government have any
8 position to state?

9 MR. WEINGARTEN: We have comments as to
10 sentencing, Your Honor. We've been provided with a copy of
11 the letter. Perhaps we should discuss the letter and then
12 come back?

13 THE COURT: All right. I just wanted to know
14 whether you have any. All right; I'll see counsel in chambers
15 briefly.

16 (Reporter's Note: Proceedings were recessed at 9:12
17 a.m.; then, proceedings were resumed at 9:25 a.m.)

18 THE COURT: Be seated, please. Mr. Weingarten,
19 you have a position to state for the Government?

20 MR. WEINGARTEN: A few words, Your Honor; thank
21 you. Your Honor, our view of this case is heavily influenced
22 by the history of the case. And the history of the case, I
23 think, has been fairly described by Mr. Hess. I would like
24 to clarify one point. Mr. Fairchild did enter into a plea
25 agreement with the United States, back in 1980, wherein he

1 was obliged to cooperate and, in return, the United States
2 represented that it would accept the plea of guilty and
3 recommend probation. That plea agreement never came to
4 fruition, for a number of reasons. Apparently, there was a
5 misunderstanding between Mr. Fairchild and the United States
6 as to the extent of the cooperation that was required under
7 the agreement. It was the belief of the United States that
8 Mr. Fairchild would aggressively go out and make cases and
9 help solve any drug-related problems that might exist at the
10 Hattiesburg Airport. I believe it was Mr. Fairchild's under-
11 standing that he would simply have to testify about his own
12 activities. Thereupon, there was the difference of opinion;
13 the United States viewed the plea agreement breached. Mr.
14 Fairchild did acknowledge his own responsibility for the
15 drug-related activities, soon after the agreement was
16 reached. The United States did allow Forrest County to pick
17 up the prosecution, in mid-1981; and I should say, for the
18 record, that was consistent with the Department of Justice's
19 policy, at that time and presently, to encourage local law
20 enforcement jurisdictions to take cases that they can prose-
21 cute themselves. Now, for purposes of the Justice Depart-
22 ment that has been supervising the investigation in Hatties-
23 burg, I think the operative time came in the fall of 1985,
24 when we first asked -- or subpoenaed Drew Fairchild to the
25 grand jury. It was our belief, then, that he was completely

1 truthful in his testimony and it is our belief that he has
2 continued to be completely truthful and completely coopera-
3 tive in our efforts with him, and we've had extensive
4 dealings with Mr. Fairchild from that moment forward. It,
5 nevertheless, is true that this case is -- does have a
6 unique history. I've often thought that it's worth about a
7 seventy-page LAW REVIEW article, just to follow its way from
8 the federal system to the state system to the federal system
9 to the state system. And I agree with Mr. Hess, it can't
10 have been an easy five years for Mr. Fairchild. Now, Mr.
11 Fairchild, the man; he appears to us to be a nice man; he's
12 been helpful. One of the nice points of this case is that
13 ~~he appears~~ to have had a complete reconciliation with his
14 father. I note, for the record, that Mr. Fairchild's father
15 is in court: Mr. Wiley Fairchild. That was not the case
16 prior, I think, to our involvement in the investigation. I
17 believe his cooperation has been complete and I think one of
18 the unusual aspects about his cooperation is, there's been
19 no puffing. Oftentimes, when people are faced with the
20 alternative of cooperating or not cooperating, when they
21 want to curry favor with the federal government, they make
22 slavish efforts to build up the quality of their evidence
23 to the point of not being truthful. We've never had that
24 experience with Mr. Fairchild. The value of his cooperation;
25 well, obviously, the court knows he testified in the Rovals

1 case. And, of course, we have been interested in the possi-
2 ble manipulation of his case, as it worked its way through
3 the Criminal Justice System. And to that end, he's been an
4 important witness; he would have been an important witness
5 in the Government's prosecution of Mr. Holmes, had not that
6 case terminated with a guilty plea. (Nothing that I say, of
7 course, mitigates Mr. Fairchild's criminal activity. And
8 it's obviously a case that what Mr. Fairchild did can't be
9 tolerated or winked at. There is absolutely no doubt in our
10 minds that there was a big effort underway in Hattiesburg in
11 1980, to make the Hattiesburg Airport the center of smuggling.
12 And Drew Fairchild was right smack in the middle of that
13 effort. There's no doubt about that. We ask that the
14 sentence imposed by the court both underscore that the law
15 and the Justice Department and the courts will not tolerate
16 such criminal conduct and, also, leave him in a position
17 where he can soon come back, make up for his misdeeds and
18 resume his life.)

19 THE COURT: All right. We will file this letter,
20 dated July 8, 1985, by Mr. Gunn, addressed to The Honorable
21 Glenn White, District Attorney For Forrest County,
22 Mississippi, in the record. It will not be under seal. Mr.
23 Fairchild?

24 (Reporter's Note: The defendant stood before the bar.)

25 THE COURT: Do you have anything you personally

1 want to say, prior to imposition of sentence in this case?

2 THE DEFENDANT: Yes, sir. I'd like to say I'm
3 very sorry for what has happened. I'm very sorry for my
4 family and, especially, for my father, who is now seventy-
5 three years of age. This has caused him a great deal of
6 harm and damage to his reputation, which he does not deserve.
7 And I'm extremely sorry for that. And that's all I have to
8 say, Your Honor.

9 THE COURT: All right. Well, we need to start,
10 Mr. Fairchild, with the undisputed fact that you are guilty
11 of conspiracy to import marijuana into the Hattiesburg,
12 Mississippi, Airport, --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- a very serious offense, then; and,
15 as your counsel has pointed out, punishment for that offense
16 has even been increased, since the date of this offense. We,
17 second, must consider the fact that you are a mature adult
18 and were, at the time. You knew exactly what you were doing
19 and you did it for the money.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Had this first operation been success-
22 ful, I have no doubt that it would have been a continuing
23 conspiracy and that Hattiesburg would have become the "Drug
24 Capital of The South." It is a very serious offense and
25 there can be no question about that. We must also acknowledge

1 that there has been a long delay in the prosecution of this
2 case and that you have had a sentence of some sort, apparent-
3 ly, pending for pretty close to five years.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I don't necessarily subscribe to the
6 notion, that your counsel stated, that you are a victim of
7 the Criminal Justice System; at least, not in the sense that
8 I understood counsel's remarks. I do confess that the
9 activities of the Mississippi authorities, in your case, are
10 virtually inexplicable. Since I am not involved with the
11 Mississippi authorities and have no control over them, I'll
12 let that statement stand without further amplification. Most
13 important, I think, is the fact that you, early on, admitted
14 your guilt in this case; and, early on, expressed a willing-
15 ness to cooperate with the Government. And you have ex-
16 pressed, on more than one occasion, your remorse for having
17 committed the offense. Those are positive factors in your
18 favor. And of course, I have personally observed your
19 cooperation at the Royals trial. And I did closely
20 observe you, during the course of that trial, Mr. Fairchild.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And I would concur with what Mr.
23 Weingarten said; I think your testimony was straightforward,
24 factual; and you testified, to the best of your ability,
25 without exaggeration or anything else. And in the areas

1 where you were unable to be positive or you were not certain,
2 it came out that you were not certain of some facts that I'm
3 sure the Government, for example, would have been happy, had
4 you been able to be more certain.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In any event, you did cooperate. You
7 have cooperated, not only in that trial but in other activi-
8 ties. And I certainly must acknowledge that and must be
9 influenced, in the imposition of sentence, by your willing,
10 truthful cooperation --

11 THE DEFENDANT: Yes, sir.

12 THE COURT: -- with the Government. I think that
13 it may be encouraging, if you can get your life put together;
14 have a reconciliation with your father. Perhaps some good
15 might come out of all of this. It is, however, even con-
16 sidering all of these circumstances, the opinion of this
17 court that the offense which you have committed mandates a
18 term of custody, of incarceration. And in your case, the
19 case of Redditt "Drew" Fairchild, it is adjudged, Mr. Fair-
20 child, that you are hereby committed to the custody of the
21 Attorney General, or his authorized representative, for
22 incarceration for a term of three years, on condition that
23 you be confined in a jail-type or a treatment-type institu-
24 tion for a period of six months; the execution of the remain-
25 der of the sentence of imprisonment is hereby suspended --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- and you are placed on probation for
3 a period of two and a half years, to commence upon your
4 release from incarceration. And the terms and conditions of
5 your probation will be that you comply with all local, state
6 and federal laws; that you comply with the rules and regula-
7 tions of the probation office.

8 THE DEFENDANT: Yes, sir.

9 MR. HESS: May he be allowed to turn himself in,
10 Your Honor?

11 THE COURT: Yes, you are eligible for self-
12 surrender; and I will authorize that, if you are willing to
13 do that, Mr. Fairchild.

14 THE DEFENDANT: Yes, sir.

15 MR. HESS: Should I coordinate that through Mr.
16 Sibille, Your Honor?

17 THE COURT: Mr. Sibille will coordinate that with
18 you right now.

19 MR. HESS: Thank you.

20 THE DEFENDANT: Thank you, Your Honor.

21 (Reporter's Note: Documents were duly signed by the
22 parties.)

23 THE COURT: All right; you have that all
24 straightened out, Mr. Sibille?

25 THE PROBATION OFFICER: Yes, sir; thank you.

1 THE COURT: All right, gentlemen; court will be
2 in recess.

3 (Reporter's Note: Proceedings were concluded at
4 10:00 a.m.)

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CERTIFICATE

STATE OF LOUISIANA:

PARISH OF EAST BATON ROUGE:

I hereby certify that the above and foregoing is a true and correct transcript, to the best of my knowledge and ability, from the record of the proceedings in this matter heard before The Honorable John V. Parker, Chief Judge, on Thursday, July 11, 1985.

Baton Rouge, Louisiana, this 7th day of January, 1986.

Helen Bazzell
HELEN BAZZELL, Official Court Reporter
United States District Court
Middle District of Louisiana
707 Florida Street, Room 221
Baton Rouge, LA 70801

I certify transcript fees and format
comply with those prescribed by Court
and Judicial Conference of the U.S.

Helen Bazzell
HELEN BAZZELL, Official Court Reporter
United States District Court
Middle District of Louisiana

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WILLIAM D. GREENMAN
OF COUNSEL
NOT ADMITTED TO P.C.

June 30, 1988

James Cole
P.O. Box 27321
Central Station
Washington, D.C. 20038Re: United States v. Walter L. Nixon, Jr.
No. H 85-00012(L)

Dear Mr. Cole:

I write to follow up on your response to the discovery order in this case. I was surprised that the response does not include two items that I assumed would be in the government's files. Because you have invited me to ask you about any items that were not produced but that I expected to see, let me identify them:

1. No notes were produced reflecting the prosecutors' anticipated questioning of Wiley Fairchild or the meeting with Fairchild and John Baltar during the trial. As you know, the Affidavit of ~~Walt~~ Weingarten confirms that such a meeting took place, and I surely would expect that Mr. Weingarten produced notes of the meeting, or outlines of his direct examination of Fairchild, or even specific questions to be asked.

2. I would have expected that Mr. Weingarten prepared a memorandum to his superiors in March of 1985 explaining why Drew Fairchild should be indicted in federal court. I think that such a memorandum would be directly relevant to our allegations concerning the motivations behind the Drew Fairchild prosecution by the Public Integrity Section, and also to evaluating the accuracy of the government's disclosures about that prosecution before and during trial.

I would appreciate a response from you as to whether those materials exist and whether you intend to produce them.

Very truly yours,

David O. Stewart

David Overlock Stewart

RECEIVED

DOS/paa

cc: Boyce Holleman



JUL 01 1988

Public Integrity Section



U.S. Department of Justice

Washington, D.C. 20530

JUL 26 1988

David Overlock Stewart, Esq.
Miller, Cassidy, Larroca & Lewin
2555 M. Street, N.W.
Suite 500
Washington, D.C. 20037

Dear Mr. Stewart:

Re: United States v. Walter L. Nixon, Jr.
No. H88-0052(G)

I write in response to your letter of June 20, 1988, in which you inquire as to the existence and/or discoverability of two categories of items.

As to your number 1: The Government does not have any items which fall within this category.

As to your number 2: Pursuant to the Order issued by Judge Nangle dated July 20, 1988, I enclose a three-page prosecution memorandum dated March 22, 1985.

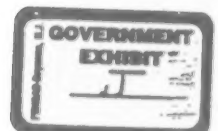
Sincerely,

James M. Cole
Trial Attorney
Public Integrity Section
Criminal Division

Enclosure

cc: Judge John F. Nangle

JMC:cmt
186-41-162
Typed: 7/25/88
Acts #8600694
Records
Sec. Chron
Cole



1 WILEY FAIRCHILD,

2 being first duly sworn, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WEINGARTEN:

5 Q. Good afternoon, sir?

6 A. Hello.

7 Q. Your name, please?

8 A. Wiley Fairchild.

9 Q. Mr. Fairchild, where do you live?

10 A. Hattiesburg.

11 Q. How long have you lived there?

12 A. Oh, about thirty some odd years.

13 Q. Where are you from originally?

14 A. Seminary, Covington County, Mississippi.

15 Q. Is that where your kin is from? Is that where your family
16 originally comes from?

17 A. Yes.

18 Q. How old are you, sir?

19 A. 73.

20 Q. What is the extent of your formal education?

21 A. I've got to the fifth grade.

22 Q. What business are you in?

23 A. Formerly in construction, now in oil exploration.

24 Q. Where is your business housed? Where do you go to work
25 everyday?



1 A. Highway 49 North about half mile north of the intersection
2 of 49 and Hardy Street.

3 Q. If someone went out there what would they find? What's out
4 there?

5 A. They would find a big tin shop and some equipment and an
6 office building.

7 Q. What goes on in that building?

8 A. Well, I run the oil department and my brother Rodney runs
9 the construction company.

10 Q. What does the construction company do?

11 A. They principally drive piling, but we do a number of
12 things.

13 Q. Give us some examples?

14 A. What?

15 Q. Give us an example of what you do?

16 A. Well, we built bridges, we have built dams, we set concrete
17 beams.

18 Q. Where do you do this work?

19 A. In Florida and Alabama and Mississippi, Louisiana,
20 Arkansas, Kentucky and Tennessee.

21 Q. How many employees does the construction company have?

22 A. Oh, it would be a wild guess. Sixty or seventy now. I'm
23 talking about W. R. Fairchild Construction Company. We got
24 Florida Construction Company got an office in Monticello,
25 Florida, and sometimes they have three or four hundred

1 employees.

2 Q. All right. What is your involvement, or what has your
3 involvement through the years been in the construction company?

4 A. Well, I was general manager up to, oh, some fifteen years
5 ago.

6 Q. And then what happened?

7 A. Well, I got involved in oil exploration and my brother
8 Rodney, R. D. Fairchild, Rodney Construction Company.

9 Q. What do you do during the day? How do you keep busy?

10 A. Well, I come in, open the mail and make any necessary phone
11 calls. I usually go around to some wells that we're drilling
12 in Jeff Davis, Marion, Covington County, Jones County.

13 Q. So you buy and sell oil interests or mineral interests?

14 A. We buy. We -- I don't do much selling.

15 Q. Okay. What do you do with the interest once you have
16 purchased it?

17 A. Well, I buy it to keep.

18 Q. To see if the revenues start coming in, if the well
19 develops?

20 A. Well, we buy leases and buy leases and then, in places
21 where we think they're good hopefully that somebody will drill
22 a well.

23 Q. What is the extent of your inventory? Can you tell us how
24 many interests you have, or what's the dollar figure? Just
25 give us any indication of what your inventory might be?

1 A. Fairchild Weathers, which I own 40 per cent, owns about 25
2 thousand mineral acres and some leases, and the construction
3 company owns 30 per cent and Rodney 30 per cent. And then
4 Crosby Mineral Resources, which Fairchild owns about 17 per
5 cent, and they own a 153,000 mineral acres.

6 Q. Can you give us a figure of revenues that are generated in
7 a given year, an average year?

8 A. Well, the revenue is down. It's about five million last
9 year I think.

10 Q. Now in either the oil business or the construction
11 business, does the Fairchild Company ever get involved in
12 litigation in court?

13 A. Yeah, we have some cases pending from time to time.

14 Q. Okay. Now who is Drew Fairchild?

15 A. That's my son.

16 Q. And can you describe in very general terms the relationship
17 you've had with Drew over the years?

18 A. Hadn't been good.

19 Q. Why not?

20 A. Well, he was taught to hate me when he was a kid. His
21 mother quit me --

22 Q. All right. Is it fair to say you didn't raise Drew?

23 A. That's right.

24 Q. Is it fair to say, as Drew got older he came to live with
25 you and you came to know him?

1 MR. FAWER: Excuse me, with all due respect. I would
2 appreciate if there are no leading questions, even on the
3 background, that Mr. Fairchild, unless there is a question
4 that's not understood, should be asked questions on direct, but
5 they shouldn't be leading questions.

6 THE COURT: Do you have an answer to that?

7 MR. WEINGARTEN: No, I'll rephrase the question.

8 BY MR. WEINGARTEN:

9 Q. Did there come a time when Drew lived with you?

10 A. Yes, when he was about twelve, thirteen years old.

11 Q. And has he lived in Hattiesburg or in Mississippi ever
12 since?

13 A. Well, he lived in Florida one time.

14 Q. As Drew became an adult, did you have a relationship with
15 him?

16 A. Yeah, he worked with me from time to time. He'd come to
17 work, get dissatisfied and he would quit.

18 Q. So how would you characterize the relationship as it
19 developed over the years? What would be your terms?

20 A. Well, it's not near as good as I would like for it to have
21 been.

22 Q. What is the situation right now?

23 A. It's better than it's ever been.

24 Q. Is there a working relationship between you two?

25 A. Yes.

1 Q. What is it?

2 A. Well, he goes with me around to the oil fields, we discuss
3 this prospect and that prospect.

4 Q. When did the relationship improve?

5 A. Oh, it started improving I guess about eighteen months ago.

6 Q. What happened?

7 A. Well, I don't know, it just happened. He begin to come
8 around to the office.

9 Q. Do you have any idea what caused the improvement of the
10 relationship?

11 A. Well, I think he found out that I really wanted to help
12 him.

13 Q. And in the last eighteen months how has the relationship
14 been?

15 A. It's been satisfactory.

16 Q. Okay. Who is Carroll Ingram?

17 A. He's a second cousin of mine and one of my former
18 attorneys.

19 Q. Where does he live?

20 A. Here in Hattiesburg.

21 Q. Describe your relationship with Carroll Ingram?

22 A. Well, he was an attorney and I used him from time to time,
23 and we have some politics together and supported Evelyn Gandy
24 together when she ran for governor last time.

25 Q. Did you have any relationship with Mr. Ingram when he was

1 Senator Ingram, did you help him?

2 A. Yes.

3 Q. How did you help him?

4 A. Well, I contributed to him financially when he would run
5 for office, and then --

6 Q. Did you help him get through school?

7 A. Yes.

8 Q. How did you do that?

9 A. With cash, money.

10 Q. What about his political campaigns for the state senate?

11 A. Well, I contributed to his campaign.

12 Q. Do you recall right now how much?

13 A. No. No.

14 Q. You mentioned something about Evelyn Gandy. What was your
15 relationship with Carroll Ingram in regard to her?

16 A. Well, he was promoting her, he was out raising money for
17 her, and he promoted me and Rodney in there. We contributed
18 real heavy to her campaign.

19 Q. About how much?

20 MR. FAWER: Your Honor, may we approach the bench for
21 a minute?

22 THE COURT: Yes.

23 (At the bench:)

24 MR. FAWER: Your Honor, I would object. I was
25 listening to some of the stuff having to do with contributions

1 to Ingram's campaign, perhaps I can understand it; how can the
2 amount of a contribution to Evelyn Gandy, a non-successful
3 gubernatorial candidate, have any bearing on this case? I
4 would object to it.

5 MR. WEINGARTEN: I think it bears upon his
6 relationship to Ingram.

7 MR. FAWER: You've been told you can't do that under
8 the rulings the Judge has made. The Judge ruled on 404(b).
9 How did the contributions fit any other --

10 MR. WEINGARTEN: Obviously the relationship between
11 Ingram and Wiley Fairchild are relevant to some portions of
12 this case. He will testify he contributed about three hundred
13 thousand dollars to the campaign because Ingram told him to.

14 MR. FAWER: So what? What does that have to do with
15 Judge Nixon.

16 THE COURT: Overruled.

17 (Open court:)

18 BY MR. WEINGARTEN:

19 Q. Mr. Fairchild, I believe I had asked you if you had made
20 some contributions to Evelyn Gandy's campaign. What was your
21 answer?

22 A. Yes.

23 Q. And how much?

24 A. Approximately three hundred thousand dollars.

25 Q. And why did you do that?

1 A. Well, I'm just noted for being a heavy contributor to
2 different people's campaign.

3 Q. Well, aside from being noted for that, why do you do it?

4 A. Well, I like to have a friend in the Governor's mansion.

5 Q. Did you make contributions to other political offices as
6 well?

7 A. Yes.

8 Q. What offices?

9 A. Well, senator, the Attorney General, secretary of state.

10 Q. All right. Do you know Bud Holmes?

11 A. Yes.

12 Q. How do you know him?

13 A. Well, I've been knowing him for years.

14 Q. In what context?

15 A. Well, he's called on me for contributions to the Southern
16 Foundation to help the college, help recruit college football
17 players.

18 Q. Did you make a contribution there?

19 A. Yes.

20 Q. Do you also make charitable contributions?

21 A. Yes.

22 Q. What is the biggest contribution that you make?

23 A. Oh, quarter of a million dollars.

24 Q. To whom did you make that?

25 A. To the Mississippi, Southern Mississippi Foundation.

1 Q. Is that in connection with the university here in
2 Hattiesburg?

3 A. Yes.

4 Q. All right. Did you ever contribute to any of Bud Holmes'
5 political campaigns?

6 A. Yeah, but just, it was, I don't remember how much, but yes.

7 Q. Did he ever solicit money from you for any other campaign
8 other than his own?

9 A. Yes.

10 Q. What?

11 A. Well, I can't remember all of them. Maurice Dantin when he
12 ran for governor was one, and --

13 Q. Are you frequently solicited?

14 A. Yes.

15 Q. And how do you respond usually?

16 A. By contributing.

17 Q. Why do you do that?

18 A. Because I want good government.

19 Q. Is there any other reason?

20 A. Yeah, if you got a friend that's -- if I got a friend that
21 needs some help sometime it's good to have somebody you can
22 help.

23 Q. Does it help if that someone is in public office?

24 A. Yes.

25 Q. Do you frequently contribute to both sides of the campaign,

1 if two people are running in the same campaign, do you?

2 A. If I do I tell them both.

3 Q. Have you done that in the past?

4 A. I have, but I can't recall one where I've done that.

5 Q. All right. If you do that, how does that help get good
6 government?

7 A. Well, you'll be able to talk to either one of them that
8 gets elected.

9 Q. Okay. Who is Skip Jarvis?

10 A. He's a former employee of mine.

11 Q. What is your relationship with him?

12 A. Well, I had to, I had to let him go.

13 Q. Let's start from the beginning. Is he kin to you?

14 A. He married my oldest sister's granddaughter.

15 Q. Where is he from originally?

16 A. Florida.

17 Q. And what is the granddaughter's name?

18 A. Pamela Manasco.

19 Q. M-A-N-A-S-C-O?

20 A. Yes.

21 Q. How did you come to know Skip Jarvis?

22 A. He applied for a job.

23 Q. Was he living in Florida at the time?

24 A. Yes.

25 Q. And how did you respond to the application?

1 A. Well, we talked about it for some several weeks, the best I
2 remember, and finally I hired him.

3 Q. In what capacity?

4 A. Well, he was my assistant in running the oil division.

5 Q. I asked you a bunch of questions about the set-up in the
6 construction company; I neglected to ask you questions about
7 how the oil division is set up. Would you take just a moment
8 and explain to the ladies and gentlemen of the jury, who is
9 employed there, who does what, and what do you do?

10 A. I'm head. I had Jarvis as my assistant, I had two more
11 people that work under him.

12 Q. At the time do you recall their names?

13 A. Yeah, Lynn Jones, who is presently the manager now, her and
14 Mike Moore and we had a Sherry Barnett.

15 Q. Okay.

16 A. Then I had some land men, but these I'm speaking of now
17 work in the office.

18 Q. Okay. On a day to day basis, what would Skip Jarvis do,
19 what would he be in charge of?

20 A. Well, just, just generally running of the office, seeing
21 that the leases that the oil man had taken the previous week
22 was filed, that the delayed rentals on the leases was paid.

23 Q. Is it fair to say he handled the paper in your office?

24 A. Yes.

25 Q. Okay. Was he competent?

1 A. While he was there I thought he was doing a good job, yes.

2 Q. Is he bright?

3 A. He's intelligent, yes.

4 Q. In fact, did you help him improve upon his education?

5 A. Yes.

6 Q. What did you do? How did you help him?

7 A. I put him through law school.

8 Q. How did he manage to handle law school and working for you?

9 A. Well, he drove back and forth to Jackson, Mississippi, and
10 taken, he had the time off necessary to do that.

11 Q. Okay. And you paid for it?

12 A. Yes.

13 Q. And Mr. Fairchild, did problems develop in your
14 relationship with Mr. Jarvis?

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1 A. A problem, yeah.

2 Q. And what was that?

3 A. We was talking with two fellers about opening up a
4 restaurant and they had the ability and I told them that, I'd
5 say, now y'all got us over a barrel, I want y'all to take a
6 polygraph test, I want to know that you're sincere. Me and
7 Rodney will take one, Skip Jarvis, he will take one, and then
8 we'll know where we stand and he refused to take it.

9 Q. Did you want Skip to take the polygraph because of this
10 restaurant business or did you have another reason in mind?

11 A. I wanted to show good faith in these two fellers that was
12 there. I wanted to get, I wanted to get what kind of people
13 they were.

14 Q. Do you have a special trust in pole graphs? Do you believe
15 in them?

16 A. Yes.

17 Q. All right. And Skip didn't want to take one?

18 A. Well, he just said he wouldn't.

19 Q. And what did you do?

20 A. Well, working people, like I had no alternative, when
21 somebody like that refused to take and other people would take
22 them, I'd have to let him go.

23 Q. Did a problem develop with Skip in your family?

24 A. Yes.

25 Q. And, in very general terms, what was the problem?

1 A. Unbeknownst to me, before I fired him, he tried to get my
2 sisters to kick me out of the company.

3 Q. And did there follow from that a bunch of dispute within
4 your family concerning you and Skip Jarvis?

5 A. Yeah, all five of my sisters was turning against me and I
6 could just tell by my instinct something was wrong and I begin
7 to write a bunch of letters and it wasn't long until I had four
8 of them to believing what I was saying instead of believing
9 what Skip was saying.

10 Q. All right. Did hard feelings develop between you and Skip?

11 A. Well, when I found out about this, yeah, I didn't like it.
12 Sure, I didn't.

13 Q. Did you ever do anything to try to hurt Skip?

14 A. No.

15 Q. Did you ever have anyone else try to hurt Skip?

16 A. No.

17 Q. What are your feelings about Skip right now?

18 A. I really don't know how to answer that question.

19 Q. Do you continue to have hard feelings towards him?

20 A. I simply can't understand when I was paying his tuition and
21 going to school and furnishing him an automobile, I cannot
22 understand why that he was trying to take over the company.

23 Q. And you believe that he was?

24 A. Yes, I believe it, yeah.

25 Q. Okay. Did there come a time when your son got in some

1 trouble with the law?

2 A. Yes.

3 Q. When did you come to know this?

4 A. Oh, some time after, some time after the drug bust down
5 here at the Hattiesburg airport.

6 Q. And how did you come to know it?

7 A. I don't remember whether he told me or Bill Porter or
8 Carroll Ingram or who. I just don't remember.

9 Q. What was your reaction?

10 A. I was thoroughly disgusted with it.

11 Q. With who?

12 A. With my son, Drew.

13 Q. Were you shocked as well?

14 A. Yes.

15 Q. Did you have any anticipation or any suspicion this was
16 going on?

17 A. No.

18 Q. Did you have any other feelings with the bust or any other
19 feelings about your son's involvement, I should say?

20 A. Well, at that time I didn't know there was, that -- when I
21 first heard about it, I was just shocked. I didn't have no
22 details.

23 Q. All right. Describe in your own words your involvement in
24 the case as it developed, starting with your first information.

25 A. Well, he wound up getting -- Well, he wound up getting Bill

1 Porter as his attorney and they went to Jackson and made a deal
2 with George Phillips.

3 Q. Did you have any relationship with Porter?

4 A. Not -- Just friends.

5 Q. All right. Did you get involved with paying Drew's legal
6 fees in any way?

7 A. Bob Royals said that Drew had promised him \$10,000 and he
8 up and sued Drew for, I think, for the \$10,000 and I read it in
9 the paper and I, unbeknownst to Drew, give Bill Porter 25
10 hundred dollars, I believe, plus some expenses.

11 Q. Did you reach into your own pocket and give Bill Porter
12 that money?

13 A. Yes.

14 Q. Why did you do that?

15 A. I didn't want Drew at that time to know that I was -- Well,
16 that's what first went through my mind but --

17 Q. I mean, why did you pay him at all?

18 A. Well, to drop that lawsuit.

19 Q. Why did you want him to drop the lawsuit?

20 A. Well, its being in the paper.

21 Q. And what was it about, the fact that the lawsuit was in the
22 paper that struck you?

23 A. Well, it was because he wouldn't pay for that hefty amount
24 on that, the fee on the drug bust deal.

25 Q. And what did you care?

1 A. Huh?

2 Q. Why did you care?

3 A. Well, I don't like that publicity in the paper, I didn't
4 want no trial to come up.

5 Q. You mentioned Bob Royals. Who is he?

6 A. He was Drew's partner at the airport.

7 Q. Did you also have a relationship with him?

8 A. Yeah, at one time he worked for me, he went out and bought
9 two leases and --

10 Q. Did you have a friendship with him?

11 A. Well, yes. Not a friendship, but I considered hiring him
12 as my airplane pilot at one time.

13 Q. You considered him?

14 A. Yes.

15 Q. He's an airplane pilot as well?

16 A. Yes.

17 Q. Do you know his wife?

18 A. Yes.

19 Q. Did he ever visit you at your office?

20 A. Yeah, several times.

21 Q. Did the 25 hundred dollars that you gave to Porter satisfy
22 Porter?

23 A. It later developed that it, it -- Maybe at that time but
24 later when he got indicted by the state court he, through Bob
25 Royals, they said they had to have another 75 hundred dollars.

1 Q. Who is "he"?

2 A. Bob Royals -- Bill Porter.

3 Q. Okay. Explain, start again. What happened with the other
4 75?

5 A. Well, I was told by Drew or Bob Royals, if we got another
6 75 hundred dollars, well, everything would be fixed, Drew
7 wouldn't be in no trouble.

8 Q. So what did you do?

9 A. I told Drew to sell everything he had, but his house, and
10 to get a good price on it, and I bought it. Then give Porter
11 the money.

12 Q. So Porter was paid?

13 A. Yeah.

14 Q. Okay. You mentioned that Drew's case became a state case.
15 Did you have any contact with Bud Holmes about this?

16 A. Bud called me when he was indicted.

17 Q. And what did he say?

18 A. He said Drew, my son Drew had just been indicted and he
19 says, the kid, let him come on down and I'll let him out on his
20 own recognizance. He says now he will need an attorney, you
21 can get Bill Porter or Carroll Ingram or who. So, Drew didn't
22 want Bill Porter and I said, Drew, you want who can do you the
23 most good, don't you? He said, yeah. Well, Bud said get, the
24 way he led me to believe, get Bill Porter and I said if I was
25 Drew, that's who I would get.

- 1 Q. Did it come about that Drew retained Bill Porter?
2 A. Yes.
3 Q. What was your response to Bud Holmes' office, the DA down
4 here, taking Drew's case?
5 A. What did I believe or what --
6 Q. How did he feel about it?
7 A. Well, I was mad about it.
8 Q. Why were you mad?
9 A. Well, I believe he was indicted because he was -- because I
10 had money.
11 Q. And what caused you to believe that?
12 A. Well, he had a deal with George Phillips and he had a deal
13 with George Phillips and I thought it was all over with.
14 Q. When Drew was indicted, did that cause any publicity in
15 Hattiesburg?
16 A. Yes, quite a bit.
17 Q. Did Drew plead guilty in state court?
18 A. Yeah, sometimes after that he, Bud Holmes give him two
19 minutes to plead guilty or he was going to throw the chick --
20 the kitchen sink at him.
21 Q. And did Drew plead guilty?
22 A. Yes.
23 Q. And that was also caused some publicity in the case?
24 A. Yes, sir.
25 Q. How did you respond to this publicity?

1 A. Well, as it went on and on, there's talk in the street, the
2 reason Drew Fairchild hasn't, his case hasn't been disposed of,
3 it was intimated that I had paid somebody off.

4 Q. You received that information?

5 A. Yeah, I received that information.

6 Q. How did that make you feel?

7 A. I was bitter.

8 Q. Did anyone contact you about money?

9 A. Yes.

10 Q. And who was that?

11 A. Bob Royals.

12 Q. And is that the former airport manager with Drew?

13 A. Yes.

14 Q. To your knowledge was Royals involved with the drug
15 smuggling at Hattiesburg airport, along with Drew?

16 A. My son said he was and of course I believe he was, and I
17 understand he was out there the night that the plane come in
18 some way.

19 Q. Was he prosecuted by anybody at that point?

20 A. No.

21 Q. What conversations did you have with Bob Royals?

22 A. Well, he would hint for money and, hint for money, and then
23 the last time he didn't hint, he just hit me right in the face
24 with it, you know.

25 Q. How do you mean?

1 A. He said me and Bill Porter went over to see Joe Crone
2 yesterday and on the way back, Bill Porter says if Drew will
3 get up off his money, he'd come clear of this thing. Royals
4 says, well, Drew don't have no money. And he said, well, his
5 old man's got it. And he said yeah, but that's his, it's not
6 Drew's. He says, well, if his old man had knew his son got his
7 tail in the crack, he'd get up off his money. And I said, Bob,
8 I got your message, loud and clear, but the answer is not no,
9 it's hell no.

10 Q. What was his message as far as you read it?

11 A. That somebody's trying to blackmail me.

12 Q. What was your state of mind at that moment? What were you
13 thinking about Drew's case?

14 A. Well, it just been dragged on and dragged on 'til, and I
15 was just thoroughly disgusted.

16 Q. And what did you do?

17 A. Well, I told John Baltar to go to George Phillips and then,
18 in my opinion, I was trying to be blackmailed and I just --

19 Q. Is that what you did immediately?

20 A. The best I remember it was. But -- best I remember it. It
21 might have been a little while later, but.

22 Q. All right. Mr. Fairchild, when did you have this
23 conversation with Royals?

24 A. Well, these dates I just can't remember, now I can remember
25 him coming out there sitting, me saying just what I did, but I

1 don't keep no diary at the office and I just don't try to
2 remember them dates.

3 Q. Do you know the gentleman seated at counsel table behind
4 Mr. Fawer, Judge Nixon?

5 A. Yeah.

6 Q. How do you know him?

7 A. He's the federal judge.

8 Q. And how do you know him? Do you have a personal
9 relationship with him?

10 A. Yes.

11 Q. Did you ever seek his help after Bob Royals came to visit
12 you?

13 A. Yes.

14 Q. And when and under what circumstances?

15 A. Something come up about Drew's case and that, that I was
16 real mad and I either got shold of the Judge or asked Carroll
17 to and, but he come out to my office, Carroll brought him out
18 there.

19 Q. Is that the first time you had ever seen the judge at your
20 office?

21 A. No.

22 Q. Did you have a prior relationship with the judge?

23 A. Yes.

24 Q. Why did you want to see the judge?

25 A. Drew said that when we paid the full 10,000, everything

1 would be over, and that was supposed to come with Bud Holmes.

2 And I just wanted Bud Holmes to do what he promised to do.

3 Q. So what was Judge Nixon to do?

4 A. Well, he had, I told him what had happened and I said, now,
5 if they will go ahead and prosecute Bob Royals, they won't hear
6 a damn word out of me. He's guilty and my son's guilty, but I
7 just don't like them picking on my son because I got money.
8 And so that's what I told the judge.

9 Q. Why did you tell Judge Nixon that?

10 A. Well, I knew him and Bud Holmes was friends and he
11 previously said, he come out there one time, thanked me for
12 putting him in a good oil deal and he said if I can ever help
13 you, I will; and if I can't, I'll tell you.

14 (Discussion at side bar, not reported.)
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1 BY MR. WEINGARTEN:

2 Q. Mr. Fairchild, when I last was posing questions to you, you
3 were describing a visit Judge Nixon made to your office, is
4 that correct?

5 A. Yes.

6 Q. Just to make sure that we understand, what prompted that
7 visit?

8 A. There was something in the paper, something come up with
9 Drew's trial, and I don't remember what it was, but maybe that
10 he wanted Drew to, to come down there. I don't remember what
11 it was, but.

12 A. It was a good reason, but it just don't come to my mind
13 now.

14 Q. Okay, what did you do? Why did you seek out Judge Nixon?

15 A. Well, he's good friends with Bud Holmes.

16 Q. How did you know that?

17 A. Well, street talk, street talk, and Bud had told me, Bud
18 had told me how close he was to him.

19 Q. Did you want something from Judge Nixon at the time?

20 A. I wanted him to get Bud Holmes to do what he had promised
21 to do, yeah.

22 Q. So did Judge Nixon come to your office?

23 A. Yes.

24 Q. Did you have a conversation?

25 A. Yes.

1 Q. What was the nature of the conversation?

2 A. I told him what it was that they was trying to blackmail me
3 and I wasn't going to be blackmailed, and that, what Bud had
4 promised to do, and I said now if they will go ahead and
5 prosecute Bob Royals, won't hear a word, because he's guilty
6 just like my son.

7 Q. Was it the visit by Royals that triggered the visit --

8 A. I think that was, yeah. I think that was the visit by
9 Royals.

10 Q. Was it the Royals matter that particularly angered you?

11 A. Well, it did, yeah, sure it did.

12 Q. Why did you use the word blackmailing. Who had been
13 blackmailing you?

14 A. I couldn't figure out nothing else, thing had drug on and
15 on and on, you just tell, work with people for fifty years like
16 I have, you just learn something about human beings.

17 Q. How did Judge Nixon respond to you?

18 A. In my office I don't recall him saying anything.

19 Q. Did he just sit there and listen to you?

20 A. Well, he kind of, yeah, kind of shook his head, maybe
21 grunted a little or something or another.

22 Q. You remember no conversation?

23 A. Well, I was doing all the talking. He might have said
24 something, but, and probably did, but I don't remember.

25 Q. Approximately how long did the meeting take?

1 A. Oh, I'd say fifteen or twenty minutes.

2 Q. Okay. Did you have subsequent contact with Judge Nixon
3 about your meeting?

4 A. He called me that night just about seven o'clock.

5 Q. What did he say?

6 A. He said Wiley, you know that man we was talking to this
7 evening? I said yeah. He said well, I'm in his home, and
8 everything going to be taken care of to your satisfaction. I
9 says thank you, I appreciate that.

10 Q. Did you recognize the voice at the other end?

11 A. Yean.

12 Q. Did he identify himself?

13 A. No.

14 Q. How did you recognize his voice?

15 A. I just can recognize voices.

16 Q. What followed that conversation with Judge Nixon?

17 A. Bud got on the phone, Bud Holmes.

18 Q. And did you recognize his voice?

19 A. Oh, yeah. Yeah.

20 Q. What did he say to you?

21 A. He said Wiley, when this man asks me to do something, I
22 don't ask no questions, I just go ahead and do it.

23 Q. What did you say?

24 A. I said thank you, Bud, I appreciate that.

25 Q. Was there any further conversation?

1 A. No.

2 Q. What's the next thing that you recall happening in your
3 son's case?

4 A. Well, it was later passed to the file.

5 Q. Okay. Do you recall when this conversation was, do you
6 have a precise date?

7 A. No.

8 Q. Did you mark it down in a calendar?

9 A. No, I don't keep no diary.

10 Q. Did it occur before or after the case was passed to files?

11 A. It occurred before the case was passed to the files.

12 Q. Are you certain of that?

13 A. Yes, that's what I was mad about, because it wasn't passed
14 to the files like Bud had promised to do it.

15 Q. Okay. You remember the conversation well, at least you're
16 testifying with some specificity to the words of Judge Nixon
17 and to the words of Bud Holmes, is that true?

18 A. Yes.

19 MR. FAWER: I would appreciate it if questions were
20 posed as opposed to argument. I would expect more of even this
21 prosecutor.

22 MR. WEINGARTEN: Your Honor, I am going to object to
23 the constant editorializing of counsel. It started yesterday,
24 it has not stopped. That is not proper conduct from an
25 attorney and he knows it.

1 MR. FAWER: You were the one who asked the questions
2 as an argument in an effort to tie down that which you are
3 uncertain of.

4 MR. WEINGARTEN: That's editorializing if --

5 MR. FAWER: It months assuredly is.

6 MR. WEINGARTEN: I'd ask --

7 THE COURT: Gentlemen, wait a minute.

8 MR. FAWER: I ask the Court to tell counsel not to
9 summarize his case where he feels he's in need of doing so in
10 the middle of interrogation.

11 THE COURT: Mr. Fawer, if I applied the same rule to
12 you, you wouldn't have been able to ask any questions the last
13 two days.

14 (Laughter.)

15 MR. FAWER: I would accept both the --

16 THE COURT: All right.

17 MR. FAWER: The sense of Your Honor's remark and the
18 humor of it. I suggest when I ask questions it is on
19 cross-examination, I may lead a witness, he may not do this as
20 his witness.

21 THE COURT: I understand.

22 MR. WEINGARTEN: Can I make one more point?

23 MR. FAWER: Do we wish to come to the bench?

24 MR. WEINGARTEN: Yes.

25 (At the bench:)

1 MR. WEINGARTEN: Government requests that speaking
2 objections be made at the bench.

3 MR. FAWER: I object to that objection.

4 THE COURT: I don't care where you make your
5 objections.

6 MR. WEINGARTEN: I don't like speaking objections
7 made -- they have no business in court.

8 MR. FAWER: You've been doing it.

9 MR. WEINGARTEN: I have not been doing it.

10 MR. FAWER: You knew you asked an improper question,
11 I had a right to object.

12 MR. WEINGARTEN: You made a speaking objection.

13 MR. FAWER: I objected to your question.

14 MR. WEINGARTEN: I want all speaking objections made
15 at the bench.

16 THE COURT: I'm not going to make that rule. Let's
17 go ahead.

18 (Open court:)

19 BY MR. WEINGARTEN:

20 Q. Do you remember this call from Judge Nixon and Bud Holmes
21 to your house?

22 A. Yes.

23 MR. FAWER: Excuse me, Your Honor. I would object.
24 The question is, does he remember it. He has just testified to
25 it.

1 MR. WEINGARTEN: That is the --

2 MR. FAWER: Excuse me, may I make my objection? He
3 has just asked the man did he receive a call. He testified to
4 what the Judge ostensibly said, what Bud Holmes said, now he's
5 asking do you remember it. I suggest it's an improper
6 question.

7 THE COURT: Overruled. Proceed.

8 BY MR. WEINGARTEN:

9 Q. Do you recall the call, sir?

10 A. Yes.

11 Q. Do you recall it well?

12 A. Yes.

13 Q. Why?

14 A. Well, it was, it made me happy. I thought my son's case
15 was going to be done away with once and for all.

16 Q. How did you find out that the case was passed to files?

17 A. Carroll Ingram, best I remember, brought me a copy of it
18 where it had been passed to the files, and brought it out to
19 the office, I believe he said something about I got you a
20 Christmas present, something, I was real happy. Called Drew's
21 wife, she was happy too, come out there, got a copy of it.

22 Q. Do you recall talking to Ingram about the telephone call
23 from the farm?

24 A. Yes.

25 MR. WEINGARTEN: Judge, I suggest that would be a

1 good time to stop.

2 THE COURT: All right. We'll recess until nine
3 o'clock in the morning.

4 (Recess.)

5 (End of Volume 4.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF MISSISSIPPI
3 HATTIESBURG DIVISION

4 UNITED STATES OF AMERICA

5
6 V. CRIMINAL ACTION NO. 885-00012(L)

7
8 WALTER L. NIXON, JR.

9
10
11 BEFORE: The Honorable James Meredith
12 Senior United States District Judge

13 DATE: January 30, 1986

14 PLACE: Hattiesburg, Mississippi

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17 VOLUME 5

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1 THE COURT: Proceed, Mr. Weingarten.

2 MR. WEINGARTEN: Thank you, Your Honor.

3 BY MR. WEINGARTEN:

4 Q. Good morning, Mr. Fairchild.

5 A. Good morning.

6 Q. Mr. Fairchild, I would like to pick up where we left off
7 last night. I believe you had testified that you had put Judge
8 Nixon into a deal. Please begin there, sir, and explain to the
9 ladies and gentlemen of the jury, what you were talking about,
10 what kind of deal.

11 A. It was some royalties in three oil wells.

12 Q. And what was your first contact with this deal?

13 A. Carroll Ingram come to my office, asked me to put the Judge
14 in a good oil deal.

15 Q. Did you know the Judge personally at that time?

16 A. To the best of my memory, I hadn't met him.

17 Q. All right. Had you ever heard of him?

18 A. Oh, yeah, yes.

19 Q. Did Carroll Ingram indicate why you should put him into a
20 good good oil deal?

21 A. Yes, said he had a bunch of kids, bunch of children who was
22 in school, some of them was getting ready to go to college.

23 Q. And what?

24 A. And he was having, he was a -- He was needing to be in a
25 good deal.

1 Q. Do you remember when this was?

2 A. No.

3 Q. You don't have any idea?

4 A. I believe it was about 1980.

5 Q. Do you remember when in 1980?

6 A. No.

7 Q. Can you associate it to any event?

8 A. Oh, my son, Drew's case was pending in the federal court.

9 Q. When the first approach came?

10 A. Yes.

11 Q. Now, do you have records that reflect that?

12 A. I didn't make no record of when Carroll come out there and
13 asked me to.

14 Q. So this is just a recollection of yours?

15 A. Yes.

16 Q. Are you certain about it?

17 A. Yes.

18 Q. You are?

19 A. Yes.

20 Q. Okay. What was your reaction to Carroll's request?

21 A. Well, I decided when he asked me to, to put him in a deal.

22 Q. Why?

23 A. Because he was a influential man.

24 Q. Why was that a consideration for you?

25 A. I believed if there was ever a time he could help me he

1 would.

2 Q. Did you act immediately when Mr. Ingram made the request?

3 Did you immediately put Judge Nixon into a deal?

4 A. No.

5 Q. Why not?

6 A. I didn't, couldn't decide what oil wells to put him in at
7 that time.

8 Q. Did you have an idea about certain wells at that time?

9 A. Well, then or shortly after then, yes.

10 Q. What were your ideas? What were you thinking?

11 A. Well, I wanted to put him in some deals that were good.

12 Q. Did you fix on any particular wells?

13 A. I picked out three wells.

14 Q. All right. What wells were they?

15 A. It's a Wilkie well in Mobile County and L. D. Ross in
16 Covington County and Rogers in Marion County.

17 Q. All right. Start with the Wilkie well and tell the ladies
18 and gentlemen of the jury, why you selected that particular
19 well?

20 A. I selected them, that because I thought it was a good well.

21 Q. And why?

22 A. Well, you just -- you just -- you get the information and
23 on a well and the logs and the core and you have an idea that
24 a, that it's going to be a good well.

25 Q. Were these wells producing at the time or were these simply

1 interests that you had in anticipation of production?

2 A. It was, we had an interest in the three wells and I think I
3 told Carroll the three wells, but the three wells that I was
4 going to put him in, and, and then, and that's the three wells
5 that we wound up putting him in.

6 Q. Who selected the wells?

7 A. I did.

8 Q. Did you negotiate with anybody about the wells?

9 A. No.

10 Q. Did you discuss other wells with anybody?

11 A. Not at that time.

12 Q. All right. Did you discuss whether or not you would put
13 Judge Nixon into a deal with these three wells with Judge
14 Nixon?

15 A. No.

16 Q. Did you have any discussions with Judge Nixon at all at
17 this time?

18 A. I don't remember having any discussion with him.

19 Q. All right. Did a period of time pass between when you told
20 Carroll Ingram that you were thinking about these three wells
21 and when documents were actually prepared?

22 A. Repeat the question.

23 Q. All right. Take from the time you told Carroll Ingram that
24 you were thinking about the three wells, --

25 A. Yes.

1 Q. -- did a period of time pass between that moment and when
2 the documents were actually prepared?

3 A. Yes.

4 Q. Do you know how long a period of time?

5 A. No.

6 Q. Can you make an intelligent guess?

7 MR. FAWER: Do we really want guesses in a courtroom.

8 BY MR. WEINGARTEN:

9 Q. What's your best estimate?

10 A. Well, it would just be a wild guess.

11 Q. Okay. Then don't do it.

12 MR. WEINGARTEN: May I have Government's Exhibit 8, 9

13 and 10.

14 BY MR. WEINGARTEN:

15 Q. I hand you, Mr. Fairchild, what's been marked Government's
16 Exhibit 8, 9 and 10 and ask you to take a look at them. What
17 are those exhibits, sir?

18 A. These are assignments that we, that I signed and give to
19 Judge Nixon.

20 Q. All right. When are they dated?

21 A. February 25, 61.

22 Q. And when were they prepared?

23 A. When were these prepared?

24 Q. Yes, sir.

25 A. Well, I don't know whether these is the backdated ones or --

1 Oh, these, I think they was prepared about a year later than
2 this.

3 MR. WEINGARTEN: Can I have 12, 13 and 14,
4 Government's Exhibits, please.

5 BY MR. WEINGARTEN:

6 Q. Mr. Fairchild, take a look at Government's Exhibit 12, 13
7 and 14. What are Government's Exhibits 12, 13 and 14?

8 A. February the 25, 1980.

9 Q. Are they also royalty deeds?

10 A. Yeah.

11 Q. Are they identical with 8, 9 and 10?

12 A. Except the dates, yeah.

13 Q. What happened? Which deeds were prepared first?

14 A. The one in February of 80 -- February of, February of 81.

15 Q. And do you know who prepared the February 81 deeds?

16 A. Skip Jarvis or Carroll Ingram, one.

17 Q. Were they prepared in your office, do you know?

18 A. If skip prepared them, they would be in my office.

19 Q. All right. Did you sign those deeds?

20 A. Yes.

21 Q. And are they dated by the signature?

22 A. Yes.

23 Q. And again for the first three, what's the dates on those?

24 A. February 25 --

25 Q. Right here, 9 --

1 A. Yeah.

2 Q. 8, 9 and 10?

3 A. 25 of February 81.

4 Q. Is there a grantee named in 8, 9 and 10?

5 A. Yeah, I'm sure there is, but I've got poor eyesight, but I
6 don't see it.

7 Q. Take your time, Mr. Fairchild.

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1 Q. You find a grantee named in any of the 1981 deeds?

2 A. No.

3 Q. Were those deeds prepared pursuant to your instructions?

4 A. To my instructions or Carroll Ingram's one.

5 Q. Why to your knowledge was no grantee put in the 81 deed?

6 A. Carroll, best of my remembering, he said he didn't know
7 what name they wanted to be put in.

8 Q. Okay. What happened to the 1981 deeds? Were they given to
9 Judge Nixon?

10 A. They were sent, to the best of my memory, they were sent to
11 Carroll Ingram.

12 Q. And what happened to them?

13 A. He sent them back and said they need to be backdated.

14 Q. Did he say why?

15 A. He said federal judge had to make disclosures, and it would
16 look better if it was backdated, that's the best of my
17 recollection what he said.

18 Q. And what did you do when he said that?

19 A. I would have given them to Skip Jarvis.

20 Q. And did you give him any instructions?

21 A. Well, Carroll had already told him, see.

22 Q. To backdate them?

23 A. To backdate them. He didn't need no instructions from me,
24 I knew he was going to do it.

25 Q. Were the deeds in fact backdated?

1 A. Yes.

2 Q. And is that the result of Government Exhibit 12, 13, and
3 14?

4 A. Yes.

5 Q. And did you sign those deeds?

6 A. Yes.

7 Q. And was a grantee named in those deeds?

8 A. Yes, Walter L. Nixon, Jr.

9 Q. Pardon me?

10 A. Yes, Walter L. Nixon, Jr.

11 Q. And did you sign the deeds yourself?

12 A. Yes.

13 Q. And did you sign it underneath an indication, or a line
14 that says, witness the signature of grantor, this 25th day of
15 February, 1980?

16 A. Yes.

17 Q. Did you sign those documents on February 25, 1980?

18 A. No, these are the ones that were backdated and it was in 81
19 was when, it was 81 when I signed them.

20 Q. I'm sorry, did I cut you off? Were you about to say
21 something?

22 A. It was in 81 when I signed them, because when the first one
23 was made up it was February 81, and then the ones that he sent
24 back out there and said backdate them, and these is the ones
25 that was backdated.

1 Q. All right. To your knowledge when is the mineral royalty
2 deal like like the one we're --

3 MR. FAWER: Excuse me. Is this a -- is this an
4 expert opinion from a lawyer?

5 MR. WEINGARTEN: His knowledge.

6 MR. FAWER: I would object.

7 THE COURT: Overruled. He's an expert in the
8 business, he'll have some knowledge about it.

9 MR. FAWER: He may have some knowledge, but that
10 doesn't give him --.

11 BY MR. WEINGARTEN:

12 Q. What is your understanding of when a mineral royalty deal
13 like the one we're talking about is legal?

14 A. When the person receives, got it in hand.

15 Q. When did Judge Nixon receive the deeds we're talking about?

16 A. Well, Carroll received them after February the 25th, 81.

17 Q. By those deeds, when was Judge Nixon to start receiving
18 money?

19 A. From the first day of runs.

20 Q. What does that mean, sir?

21 A. Well, that's something you put in there, it's customary to
22 put in deals to, from the first date the well starts producing.

23 Q. Were any of those wells producing in February 81?

24 A. Yes, I think they all were.

25 Q. What was the practical effect as you understand it, of

1 backdating those deeds?

2 A. What was the practical effect? Well, it was backdated,
3 you'd have to ask Carroll Ingram that, he's the one asked me to
4 backdate them.

5 Q. As you understand the oil business, what was the practical
6 effect of what you did?

7 A. I don't know how to answer that question.

8 Q. Did the backdating effect when Judge Nixon was to be paid?

9 A. Was the backdating what?

10 Q. Did the backdating effect when Judge Nixon was to get paid?

11 A. It was the intent all the time for him to get paid for the
12 first day of runs.

13 Q. And did that change at all with the backdating?

14 A. Well, that's done, that is done in the oil business; it's
15 common to backdate --

16 Q. Why?

17 A. -- things. Just to get from the first date of runs.

18 Q. Is it not fair to say, though, that Judge Nixon was to get
19 paid from the first day of runs with the 81 deed, and the 80
20 deeds?

21 MR. FAWER: Could we go back to direct examination as
22 opposed to the leading questions? Would you agree that's what
23 that is?

24 MR. WEINGARTEN: I ask for a ruling.

25 MR. FAWER: Is it fair to say is by definition a

1 leading question.

2 MR. WEINGARTEN: Your Honor, may I pursue my
3 questioning as I'm doing?

4 MR. FAWER: I would object to the form of the
5 question.

6 THE COURT: Overruled.

7 BY MR. WEINGARTEN:

8 Q. Is it not fair to say, Mr. Fairchild, that Judge Nixon was
9 to get paid from the first runs with the 80 documents and the
10 81 documents?

11 A. Yes.

12 Q. So why was there backdating?

13 A. Because Carroll Ingram asked us to backdate them.

14 Q. From your understanding of the oil business, did the
15 backdating have any practical effect at all on the deal that
16 you were contemplating with Judge Nixon?

17 A. Repeat the question now?

18 Q. From your understanding of the business, what changed
19 between you and Judge Nixon when you backdated those deeds?

20 A. Well, it would have been the same effect if he'd have got
21 the -- got that from the first day of runs, he would have got
22 paid from the first day of runs on either instrument.

23 Q. From your understanding, when was that deal legally
24 effective?

25 MR. FAWER: I think that was asked and answered, I

1 would object. Your Honor had ruled on the question, he ~~was~~
2 allowed to ask it an it ~~was~~ answered.

3 MR. WEINGARTEN: I think he can clarify that.

4 MR. FAWER: Excuse me. He --

5 THE COURT: I'm sustain it. He already said when he
6 received the deeds they were effective.

7 MR. WEINGARTEN: Thank you, Your Honor.

8 BY MR. WEINGARTEN:

9 Q. Mr. Fairchild, in your view, in your opinion, what ~~was~~ the
10 value of the three mineral royalty interests that are
11 represented in Government's Exhibit 8, 9, and 10?

12 MR. FAWER: Could we have an idea of some date, day?

13 BY MR. WEINGARTEN:

14 Q. As of February 25, 1981?

15 A. Oh, approximately twenty-six, twenty-eight thousand
16 dollars.

17 Q. How do you come up with that figure?

18 A. Well, it's just a judgment.

19 Q. And a judgment based on what?

20 A. On all the information I had about the well.

21 Q. Were the wells worth more or less than that in your
22 judgment on February 25, 1980?

23 A. They were worth less.

24 Q. Why would that be?

25 A. Well, the best of my memory they had been in production and

1 it's, you know, they had been producing.

2 Q. Would you have had more or less information about these
3 wells in 1981 than in 1980?

4 A. We had more in 1981.

5 Q. Do you recall what you bought those mineral interests for
6 originally?

7 A. Two hundred dollars a lease acre.

8 Q. Do you recall when you would have purchased them?

9 A. No, but some two or three years earlier.

10 Q. And would the value of the royalty interests have changed
11 over that two or three year period?

12 A. Yes.

13 Q. Why?

14 A. Well, a lease acre is equivalent to seven royalty acres,
15 and I bought the seven royalty acres for two hundred dollars an
16 acre, best I remember. And that was all it was worth back at
17 that time.

18 Q. Why would it be worth more later?

19 A. Well, because wells was drilled around there, and the
20 closer the lease gets to production the more it's worth.

21 Q. Were you out to make money yourself on this deal with Judge
22 Nixon?

23 A. As a general rule, I don't deal in buying and selling for
24 profits. I buy something to keep it.

25 Q. And what about when you sell something?

1 A. Huh?

2 Q. What about when you sell something?

3 A. Well, when I sell something, I want to get something, of
4 course, for it, and something, something where it won't look
5 like a hundred per cent gift.

6 Q. Was that the situation in this case, Mr. Fairchild?

7 A. I'd say yes.

8 Q. What was done with the 1980 deed?

9 A. I don't know.

10 Q. Were they recorded?

11 A. I don't remember.

12 Q. Did you have anything to do with the recordation of the
13 deeds?

14 A. No.

15 Q. Pursuant to your agreement, or pursuant to the deal with
16 Judge Nixon, who was to pay Judge Nixon when the royalties
17 matured, when they were ready for payment?

18 A. Well, the construction company was responsible on the
19 Wilkie well and Fairchild Windham on the other two wells.

20 Q. Why was that?

21 A. Well, because we had the working interest in the wells, and
22 we have to pay our own royalty owners.

23 Q. Did you make any effort to get the oil companies themselves
24 to pay Judge Nixon?

25 A. Yes.

1 Q. What efforts did you make?

2 A. I told Carroll Ingram to try to get them to, but we do that
3 in all transactions where we buy something, two of us together,
4 we try to get them to pay all the royalty just to keep from
5 having to do that work in the office.

6 Q. Were you successful in your efforts?

7 A. No.

8 Q. And what ultimately happened?

9 A. We had to pay them ourselves.

10 Q. And did you in fact do that?

11 A. Yes.

12 Q. And were checks issued from your office to Judge Nixon?

13 A. Yes.

14 Q. I hand you, Mr. Fairchild, what's been marked Government
15 Exhibit 18 and 19, and ask you, sir, if you can identify them?

16 A. Yes, that's some royalties that we paid Judge Nixon.

17 Q. Now I note there are two sets of checks, is that correct?

18 A. Yes, sir.

19 Q. And I note that there are three royalty interests passed.
20 Why is there a discrepancy?

21 A. I don't understand the question.

22 Q. What arrangement was made for payment to Judge Nixon in
23 your office?

24 A. What arrangement was made for us to pay Judge Nixon?

25 Q. Yes?

1 A. When we get paid from the purchaser, we turn around and pay
2 all the royalty owners.

3 Q. All right. Why are there two different sets of checks?

4 A. Well, one of them is Fairchild Windham and the other is W.
5 R. Fairchild Construction Company.

6 Q. Fairchild Windham includes what mineral royalty interest,
7 what well is covered by that check?

8 A. Ellzey Ross.

9 Q. What about the other check?

10 A. The Wilkie well I assume and the Rogers well.

11 Q. Why would there be a difference?

12 A. Huh?

13 Q. Why was there a difference in the arrangement with Judge
14 Nixon?

15 A. Why was there a difference in --

16 Q. Why are there two different kinds of checks?

17 A. Well, there are different ownership in Fairchild Windham
18 than there were in Fairchild Construction.

19 Q. One company owned one well and the other company owned
20 interests in the other two wells?

21 A. Yes.

22 MR. WEINGARTEN: We move into evidence Government's
23 19 and 20.

24 MR. FAWER: No objection.

25 MR. WEINGARTEN: Starting with -- we move into

10.

AWER: Still no objection.

Exhibit G-17 marked.)

Exhibit G-18 marked.)

Q:

18. I believe that's the other set. What is
first check?

82.

amount?

the check made out to?

Nixon, Jr.

about the checks?

Q.

authorization?

A. please proceed. Just give the date -- are all
follow, are they all made out to Judge Nixon?

AWER: Your Honor, just in order to save time,
stipulated, there is a listing of the checks by
We will stipulate there is every check made
Nixon in the amount in which it states on it
I think in fact the government turned over a
it. To sit here and listen to the witness read
a little pointless. I'm willing to do it, I

1 don't think that there is any issue about that. The checks are
2 shown deposited to Judge Nixon's account from both of these
3 different companies.

4 MR. WEINGARTEN: I think the jury should hear.

5 MR. FAWER: Withdraw my objection.

6 THE COURT: Okay.

7 BY MR. WEINGARTEN:

8 Q. Just give the dates and the amounts of the checks in
9 Government Exhibit 187

10 A. The next date is, was March 3, 1071.29. March 26, 1103.88.
11 And May 82, 1060.70. June 28, 974 thousand --

12 MR. FAWER: 974.

13 THE WITNESS: 974.69. July 23rd, 1028.70. August 24,
14 1061.61. September 9th, 82, 10 thousand.

15 BY MR. WEINGARTEN:

16 Q. Say that again.

17 A. 10,093.40.
18
19
20
21
22
23
24
25

1 Q. Let me stop you there. Is it fair to say that amount is
2 considerably larger than the amounts you previously read?

3 MR. FAWER: I'll stipulate that.

4 THE WITNESS:

5 A. Yeah.

6 BY MR. WEINGARTEN:

7 Q. Why is that, sir?

8 A. Well, that's the way we received the money.

9 Q. Do you recall anything specific happening that caused such
10 a large check then?

11 A. I remember us getting one check for 4 hundred something
12 thousand but if that would be a Billy Riley or our controller
13 could explain it easily.

14 Q. All right, sir. You don't have a specific recollection of
15 an event that would have caused that?

16 A. No.

17 Q. All right. Please continue.

18 A. September 29, 2 thousand 216 dollars and 85 cents, October
19 25, one thousand five hundred and 36 dollars and 34 cents,
20 November the 29, 82, one thousand 7 hundred 40 dollars and 69
21 cents, December 10, 82, one thousand 6 hundred 34 dollars and
22 26 cents, January 26, 83, one thousand one hundred 13 49,
23 February 28, 83, one thousand 316.22, March 28, 83, one
24 thousand 736.78, April 22, 83, one thousand 327.38, May 23, one
25 thousand 248.20, June 22, 83, one thousand 4 hundred 49.87,

1 July 25, 9 hundred 38 dollars and 2 cents; August 26, 800 and
2 78 dollars and 9 cents, September 83, 9 hundred 25 dollars and
3 20 cents, November eleven 83, five hundred 95 dollars and five
4 cents, November 30, 83, five 72.49, December 28, 813 dollars
5 and 70 cents, January 27, 84, 391 dollars and 61 cents,
6 February 29, 84, 783.82, March 20, 84, 532.26; April 27,
7 564.88, May 24, 84, 726.21, July 27, 84, 928.34, July 30,
8 975.18, August 29, 927.13, September 28, 849.45, October 23,
9 84, 705.20, November 28, 84, 964.76. December 31, 84, a
10 thousand 56.75, January 28, 85, a thousand 79.37 -- I can't
11 read this, it's in 85, it would have been the next month, a
12 thousand 53.16, and this is in 85 and I can't read it. It
13 looks like maybe March 20, it's smeared up, 9 hundred 91
14 dollars. April 22, 85, 963.74, May 24, 85, 896.55, July 1,
15 299.19, and August 22, 85, 581.05.

16 Q. Mr. Fairchild, those checks, I think you said, cover the
17 Wilkie and the Rogers wells. Is that correct?

18 A. Yeah.

19 Q. What are the state of those wells now? Are they still
20 producing?

21 A. Yes.

22 Q. I noted that the numbers began to diminish as you read
23 them. Did you pick that up?

24 A. Yes.

25 Q. And why was that?

1 A. They have unitized that field and when you unitize a field,
2 you, they, you just get an interest in all of the well, and
3 Texas Getty was operating this well, and I think they had one
4 percent of the well or two percent or something and they just
5 purposely cut the well down to where we getting about, well,
6 where we getting 35 thousand a month at one time, now we-
7 getting about 13, 14 thousand.

8 Q. Are you challenging that in any way?

9 A. It's in court.

10 Q. And if you're successful, what will happen?

11 A. We will get what this one well's producing.

12 Q. If you're successful, would Judge Nixon benefit from that
13 victory?

14 A. Yes.

15 Q. Do you have any idea of the life expectancy of either -- Do
16 you know or do you have an opinion about the life expectancy of
17 the Wilkie well or the Rogers well?

18 A. I've been fooled so many times on the life of them, the
19 Wilkie well was supposed to last a long, long time.

20 Q. In the oil business, what does that mean?

21 A. Well, 20 years.

22 Q. Okay. About how the other well, the Rogers well? What's
23 your expectation?

24 A. Oh, 12 or 15.

25 Q. All right. Is it fair to say the oil business is risky?

1 A. Yes, very risky.

2 Q. And people often select wells that don't produce. Is that
3 correct?

4 A. Yes.

5 Q. Why did you select three wells in this instance?

6 A. Well, because the oil well was risky and I wanted it to be
7 a good deal and put him in three and the odd are way against
8 three wells going bad.

9 Q. Of the three wells you selected, were all three wells good?

10 A. The L. D. Ross is not such a good well.

11 Q. Is that well, are the interests in that well represented by
12 Government's Exhibit 19?

13 A. Yes.

14 Q. Go through those checks the way you went through the other
15 checks.

16 A. February 18, 82, 4 hundred 64 dollars and 25 cents, April
17 6, 82, one dollar and 12 cents, June 7, 82, 14 -- a hundred and
18 43 dollars and 51 cents. September 15, eleven dollars and 92
19 cents. January 4, 82, five dollars 50 cents, February 14, 83,
20 3 hundred 72 dollars and 65 cents, May 9, 83, 3 dollars and 69
21 cents. July 13, 83, 4 dollars and 27 cents, February 13, a
22 hundred and 56.27, February 10, 84, 39 dollars and 81 cents,
23 April 18, 84, five dollars and 48 cents, and July of 84, 4
24 hundred 28 dollars and 56 cents, October 4, 84, nine dollars
25 and 92 cents, December 31, 84 -- 2 dollars 29 cents, February

1 12, one hundred 77.13, April 153 dollars and 75 cents and May
2 85, 246.51, May 23, 85, 122.36, and August 6, 85, five dollars
3 and 55 cents.

4 Q. What happened with that well? Do you know?

5 A. I think it was mechanical trouble that never did get it
6 opened it down there in the producing zone.

7 Q. Is there any expectation for improvement, as far as you
8 know?

9 A. No.

10 Q. What arrangements were made that you know about for Judge
11 Nixon to pay for those interests?

12 A. Carroll Ingram handled that. I don't remember anything
13 about that.

14 Q. Did you fix a price?

15 A. Huh?

16 Q. Did you fix a price?

17 A. I could have, could have, but I don't remember, but in all
18 probability somebody would say here's what we have got down
19 there, but Carroll Ingram was handling it and I was depending
20 on him to, you know.

21 Q. Were you involved in any negotiations with Judge Nixon
22 about the price?

23 A. No.

24 Q. Were you involved in any discussions with Judge Nixon about
25 the price?

1 A. No.

2 Q. Were you involved in any negotiations with Judge Nixon
3 about interest rates?

4 A. No.

5 Q. About collateral?

6 A. No.

7 MR. WEINGARTEN: Government's Exhibit 15 16 and 17.

8 BY MR. WEINGARTEN:

9 Q. I hand you Government's Exhibits 15, 16 and 17, sir, and
10 ask you if you have ever seen them?

11 A. I probably saw them but I don't recall seeing them, no.

12 Q. Do you normally take notes back for consideration of
13 mineral royalty interests that you sell?

14 A. What?

15 Q. Do you normally take paperback or do you take notes back
16 for the consideration of mineral royalty interests that you
17 sell?

18 A. Well, like I say, I don't deal in this and I don't deal in
19 this, and just in some cases and Skip Jarvis and Carroll Ingram
20 handled this.

21 Q. Well, do you recall in all your years in the oil and gas
22 business, ever taking a note back for consideration in a sale
23 of a mineral royalty interest?

24 A. No, I hadn't. I don't recall one. I could have, but I
25 just don't remember it if I have.

1 Q. Do you recall the first time you met Judge Nixon?

2 A. The first time that I remember it, he come by the office.

3 Q. And what happened?

4 A. He thanked me for putting him in the oil deal.

5 Q. Was he alone or was he with someone else?

6 A. Carroll Ingram brought him out there.

7 Q. Where in your office did you meet?

8 A. In my office.

9 Q. Was there ever a time you were alone with the judge?

10 MR. FAWER: Excuse me, could we have some dating of
11 this incident?

12 BY MR. WEINGARTEN:

13 Q. Do you have a date, Mr. Fairchild, can you tell us --

14 A. No.

15 Q. When would this have taken place in connection with the
16 deal that we have talked about?

17 A. It would have been, it would have been Judge Nixon started
18 receiving some checks.

19 Q. How do you know that?

20 A. Well, he thanked me for putting him in the deal.

21 Q. Well, how do you know about checks?

22 A. Well, I assume that he got the checks in and knew he had
23 been put in a good deal.

24 Q. All right. What do you recall about the meeting?

25 A. Well, he thanked me for putting him in there and we just

1 had a friendly conversation and he says if I can ever help you,
2 I will and if I can't, I'll just tell you I can't.

3 Q. Was Carroll Ingram present during that conversation?

4 A. No.

5 Q. Where was he?

6 A. Well, he went back in the coffee -- No, I don't -- I don't
7 know. I think he went back in the coffee room and one of my
8 secretaries carried him back to the office.

9 Q. Did Judge Nixon mention to you that he had received checks?

10 A. No.

11 Q. Why do you date the meeting to the receipt of the checks?

12 A. Well, because he thanked me for putting him in a deal.

13 Q. When was the deal effective?

14 A. From the first day of the production on the wells.

15 Q. When did Judge Nixon, to your knowledge, receive the
16 finished documents?

17 A. Well, I give them to Carroll Ingram. I don't have any
18 idea, so he sent signed them and put them on record and I don't
19 know what he done with them after that.

20 Q. Okay. When was the next time you saw Judge Nixon?

21 A. Oh, well, it was some time after that that something
22 happened in my sons case that upset me and I asked Carroll to
23 get ahold of him, that I wanted to talk to him. And he come
24 out there --

25 Q. Is that --

1 A. -- or Carroll brought him out there, one.

2 Q. Is that the meeting that you discussed yesterday?

3 A. Yes.

4 Q. Okay. Did you ever talk to Judge Nixon about other deals
5 that you might put him in?

6 A. Oh, I mentioned one other deal that I was considering
7 putting him in.

8 Q. What deal was that?

9 A. Board of Education well in Simpson County.

10 Q. And did you in fact put Judge Nixon in another deal?

11 A. No.

12 Q. Why not?

13 A. Well, that well turned out to be no good.

14 Q. Did Judge Nixon indicate interest in more deals with you?

15 A. Well, we discussed it at a cocktail party one night and it
16 was brought up and I was the one that told him I would, I would
17 think about putting him in another deal.

18 Q. What was Judge Nixon's response?

19 A. Oh, he was friendly. I mean, we had a good conversation.

20 Q. Okay.

21 A. And I was feeling no pain, I don't remember what went on,
22 everything, you know, but I do remember the conversation.

23 Q. All right. Mr. Fairchild, did there come a time in 1984
24 when the federal authorities came and talked to you?

25 A. Yes.

1 Q. Do you recall when that was?

2 A. I don't recall no dates, no.

3 Q. Did the FBI discuss with you the deal that you have
4 discussed today before this grand -- before this jury?

5 A. Yes.

6 Q. And how did you respond to the FBI?

7 MR. FAWER: Excuse me, Your Honor, I would object to
8 this line of inquiry. Is he seeking to impeach his own
9 witness? At this point I submit what he said to the FBI is not
10 probative of the events in this case. What he said on a
11 previous occasion, I mean, I've allowed an awful lot of hearsay
12 to come in without objection in terms of conversations, but
13 here's he's being asked what he said on an occasion out of
14 court with nonparticipants in this case and I would object
15 strenuously, Your Honor.

16 THE COURT: What's the reason for asking that
17 question?

18 MR. WEINGARTEN: Perhaps we should approach the
19 bench.

20 THE COURT: Yes. (AT SIDE BAR:)

21 MR. WEINGARTEN: We intend to ask questions that are
22 responsive to Mr. Fawer's cross-examination of Skip Jarvis and
23 ask Mr. Fairchild about the meeting Jarvis had with him, so
24 some of the things he said to him that were played on the tape
25 and generally what his responses were to the FBI to explain

1 what led up to his difficulty with the law.

2 MR. FAWER: Excuse me, Your Honor. His difficulty
3 with the law is not part of his direct case. That may be
4 probative but he's not on trial --

5 MR. WEINGARTEN: The court has already ruled on that.

6 MR. FAWER: Excuse me, I didn't interrupt you. --
7 the testimony of Jarvis, when he was put on the stand, now they
8 put this witness on the stand and if he lied on other
9 occasions, that may be something I bring out on
10 cross-examination. Under the classical rules of evidence, to
11 bring that out, if he wants to soften the impact, that would
12 make it improper direct. He is simply -- I don't have any
13 objection if he wants to bring out the man pled guilty. If he
14 wants to bring that out, we had a discussion --

15 THE COURT: Is what he told in the grand jury
16 different from what he said now?

17 MR. WEINGARTEN: Yes.

18 THE COURT: It is different?

19 MR. FAWER: Right. What he told Jarvis is different
20 and what he told the grand jury is different.

21 THE COURT: Well, he can bring it out.

22 MR. FAWER: Thank you.
23
24
25

1 (Open court:)

2 BY MR. WEINGARTEN:

3 Q. Were you completely truthful with the FBI when they
4 interviewed you, Mr. Fairchild?

5 A. No.

6 Q. Do you recall an occasion when Skip Jarvis came to visit
7 you in your office around that time?

8 A. When he had the tape on, yeah.

9 Q. Did you know that Skip Jarvis was taped?

10 A. No.

11 Q. What was your feeling toward Skip Jarvis at that time?

12 A. I knew he wasn't out there, wasn't out there to help me.

13 Q. Nevertheless you did engage him in conversation, did you
14 not?

15 A. Yes.

16 Q. Do you recall that meeting, Mr. Fairchild?

17 A. Yes.

18 Q. Do you recall telling him anything about why you put Judge
19 Nixon into the deal?

20 MR. FAWER: Excuse me, I would object. I have no
21 problem if he wants to say he was untruthful, whatever he
22 wants. To go down chapter and verse would be improper direct
23 examination with respect to what he said to Jarvis or Jarvis
24 says to him, it is blatant hearsay in terms of a direct
25 examination.

1 THE COURT: Overruled.

2 BY MR. WEINGARTEN:

3 Q. Do you recall a conversation with Mr. Jarvis about why you
4 put Judge Nixon into a deal?

5 A. I don't remember the specific words, no.

6 Q. Then I ask for defense exhibit -- the transcript of the
7 tape that was played yesterday, I'm not sure of the number.

8 MR. FAWER: 15.

9 MR. WEINGARTEN: 16, please.

10 BY MR. WEINGARTEN:

11 Q. I hand you Defense Exhibit 16, ask you to take a look on
12 Page 31. There is underlining, don't look at that. Look at
13 the portion of your conversation above that?

14 MR. FAWER: May we approach the bench, Your Honor?

15 THE COURT: Yes, sir.

16 (At the bench:)

17 MR. FAWER: Judge, I'm at a total loss to understand
18 the rule of evidence, honest I am, under which this is going
19 in. I have a fair understanding of the rules of evidence.
20 He's, he is now being asked to explain why he lied on an
21 earlier occasion, what his answers were on another occasion,
22 unrelated to the participants in this case. We're talking
23 about April of 1984. The events, this has nothing to do, it's
24 Jarvis being sent in by the FBI. I cannot conceive of the rule
25 of law that permits this interrogation. I can do it on cross,

1 because I have a right to impeach. He's simply being allowed
2 to, what Your Honor has allowed him to do is impeach in
3 advance. On what theory?

4 THE COURT: Well, if he wants to bring out different
5 statements that this man has made at different times about
6 things, he can do it.

7 MR. FAWER: On what theory? On what rule of
8 evidence, Judge? I'm perfectly willing to go along, but I know
9 of no rule of law. He's simply trying to soften the cross.

10 THE COURT: No, he isn't.

11 MR. FAWER: What else is it?

12 THE COURT: I don't know what he's trying to do.

13 MR. FAWER: We ought to have a proffer then as to why
14 he's doing it.

15 MR. WEINGARTEN: Mr. Fawer introduced this document,
16 this tape as substantive evidence. Half the conversation is
17 Wiley Fairchild. I have a right for Wiley Fairchild to explain
18 what he said about a piece of evidence that's already before
19 the jury.

20 MR. FAWER: Wait a minute. I introduced it through
21 Jarvis on the cross-examination of Jarvis as to Jarvis. You
22 didn't object.

23 MR. WEINGARTEN: Sure we did. We said it was
24 hearsay.

25 MR. FAWER: Excuse me, you never objected.

1 MR. WEINGARTEN: Jan did.

2 MR. FAWER: The record is blank,.

3 MR. WEINGARTEN: We had an anticipatory objection,
4 hearsay as far as Fairchild was concerned.

5 THE COURT: Have you made your record?

6 MR. FAWER: I've made my record.

7 THE COURT: Proceed.

8 (Open court:)

9 BY MR. WEINGARTEN:

10 Q. Do you recall now the conversation with Skip Jarvis?

11 A. Yes.

12 Q. Did you tell Jarvis why you put Judge Nixon in the deal?

13 A. Well, it explains here what the conversation was and what
14 it meant, yeah.

15 Q. What did you tell Jarvis -- put that down. Put that
16 transcript down. What do you recall telling Jarvis at that
17 time?

18 A. That I'd rather put a judge, prosecuting attorney or
19 something in a deal than somebody else.

20 Q. At that time were you telling Skip Jarvis the truth?

21 A. Yes.

22 Q. Now were you indicted by the federal grand jury in this
23 matter?

24 A. Yes.

25 Q. And what were the charges lodged against you?

1 A. Giving a gratuity and perjury.

2 Q. Do you recall when you were indicted?

3 A. July I think it was.

4 MR. FAWER: We will stipulate it was September.

5 BY MR. WEINGARTEN:

6 Q. September, 1984?

7 A. Yeah.

8 Q. And what happened in your case, Mr. Fairchild?

9 A. Well, I had a -- I pleaded guilty to the gratuity and the
10 government dropped the charge of perjury.

11 Q. Was there a plea agreement?

12 A. Yes.

13 Q. And was the plea agreement between you and the government?

14 A. Yes.

15 Q. Where did you plead guilty, do you recall?

16 A. In New Orleans.

17 Q. Do you recall what judge?

18 A. Judge Carr.

19 Q. And did there come a time for sentencing?

20 A. Yes.

21 Q. What sentence did you receive?

22 A. Two years with twenty-two months suspended, and two months
23 in a halfway house.

24 Q. Where was the halfway house?

25 A. Jackson.

1 Q. Have you served your sentence?

2 A. Yes.

3 Q. What did the government recommend to Judge Carr as far as
4 your sentence was concerned?

5 A. They recommended that I not be incarcerated.

6 Q. And Judge Carr did what?

7 A. He sentenced me to two years, suspended twenty-two months.

8 Q. How much time did you actually do?

9 A. Well, technically two months, but the way it was, come
10 about I checked in on a Friday morning, got credit for Friday,
11 Saturday, and Sunday, and there was some holidays and stuff in
12 there. I think I spent 39 nights up there.

13 Q. In Jackson?

14 A. Yeah.

15 Q. Mr. Fairchild, when was the first time you told anybody
16 about the phone call from Bud's farm about which you testified
17 yesterday?

18 A. Repeat the question.

19 Q. When was the first time you told anybody about that call?

20 A. It was a day after that my attorneys had argued the motion
21 before Judge Carr to dismiss the indictments, it was the day
22 after that. It was in Wallace Gunn's office here in
23 Hattiesburg.

24 Q. So it would have been after you were indicted?

25 A. Yeah. They argued to dismiss the indictments before Judge

1 Carr. He turned them down.

2 Q. All right. Up to that point had you told anyone on behalf
3 of the government about that call?

4 A. No.

5 Q. After you disclosed the fact of the call to your lawyers,
6 what happened? Don't say what anybody said, but what
7 information -- what happened then?

8 A. Well, we discussed the terms in general.

9 Q. All right. Was the information passed to anybody about the
10 call?

11 A. Well, I passed the information to my lawyers.

12 Q. And did your lawyers then pass the information to anybody?

13 A. Well, in the plea bargain, yeah.

14 Q. I just want to ask one or two questions about the call that
15 I didn't ask yesterday and then I'll be through, Mr. Fairchild.
16 You testified yesterday that you used the word blackmail in
17 your conversation with Judge Nixon, is that correct?

18 A. Yes.

19 Q. Did you indicate to Judge Nixon who it was that you thought
20 was blackmailing you?

21 A. Well, I thought it was Bud Holmes.

22 Q. Did you tell Judge Nixon that?

23 A. Yes.

24 Q. Did you make any request of Judge Nixon?

25 A. Well, he had said if he could ever help me he would, and I

1 just told him about that I would be, in my opinion I was being
2 blackmailed, and that I was damn tired of it, street talk was
3 that the reason my son was got out because I had been, had paid
4 somebody off, and --

5 Q. Did you make any request of the judge?

6 A. We had this conversation. I told them that Bob Royals was
7 just as guilty as my son was, and if they would go on an indict
8 and prosecute him, they wouldn't hear a word out of me. They
9 wouldn't hear a word out of me. At that time then Drew and I
10 wasn't on good terms, but I was just fed up with all this
11 newspaper stuff, street talk, and I assumed that he would go on
12 and talk to the --

13 Q. Talk to who?

14 A. To Bud Holmes.

15 Q. All right. The call you received that night, who got on
16 the phone first?

17 A. Judge Nixon.

18 MR. WEINGARTEN: Thank you, Mr. Fairchild.

19 THE COURT: Let's take a short recess.

20 MR. FAWER: Before we do that, I think there is a
21 single charge you might want to give the jury at this point
22 (Indicating).

23 THE COURT: Guilty pleas entered by government
24 witnesses may not under any circumstances be considered by you
25 as proof of the guilt of Walter L. Nixon, Jr. A criminal

1 defendant is entitled to have the issue of his guilt determined
2 solely on the basis of the evidence admitted specifically
3 against him and not upon whether a government witness pled
4 guilty to the same or similar charges. You may take into
5 account the guilty pleas of the government witnesses only when
6 you are considering the credibility of that witness.

7 MR. FAWER: Thank you, Judge.

8 THE COURT: We'll recess for a short time.

9 (Recess.)
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1 THE COURT: Proceed, Mr. Fawer.

2 MR. FAWER: Thank you, Judge.

3 CROSS-EXAMINATION

4 BY MR. FAWER:

5 Q. Good morning, Mr. Fairchild.

6 A. Good morning.

7 Q. We've met before, am I right?

8 A. Yes.

9 Q. Couple years ago?

10 A. Yes.

11 Q. It's been a long time?

12 A. Yeah.

13 Q. How are you feeling?

14 A. Fine.

15 Q. Good. Let me ask you something: let's go back, I'm going
16 to try to ask you some questions so we can try to put some
17 dates and flesh out some of the things that you have testified
18 about, okay? If you don't understand any question I ask, just
19 tell me and I'll try to repeat it or I'll rephrase it, okay?
20 Any problem with that?

21 A. Except I don't remember dates, I don't keep no notes.

22 Q. That's really the first thing I wanted to ask you about.
23 Really dates is, if there is one area you're really bad on,
24 it's when different things happen, is that right? You're not
25 good on dates?

1 A. I just don't try to remember them. I was trying to
2 remember the important things as they happen, but I don't try
3 to set out --

4 Q. We understand that. You don't keep calendars, you don't
5 keep diaries, nobody says you have to, right?

6 A. That's right.

7 Q. You're just going to try to do the best you can in
8 recalling, right?

9 A. Right.

10 Q. Let's go back in time. As I understand it, until 1979,
11 let's just use that date, there had never been any publicity
12 that was bad publicity in terms of the Fairchild name, is that
13 right?

14 A. That's right.

15 Q. You had never been in any trouble at all?

16 A. No.

17 Q. Nobody who was associated with your company or your family
18 had ever had any trouble of that sort, correct?

19 A. Right.

20 Q. And basically in fact the only kind of publicity you had
21 ever had up to that time was the kind you would want to have,
22 doing some good deeds, right?

23 A. Yes.

24 Q. You were proud of that?

25 A. Yes.

1 Q. And you were proud of the Fairchild name as well?

2 A. Yes.

3 Q. And you were proud of your kin as well, correct?

4 A. Pardon?

5 Q. People who were your kin who were doing well in various
6 businesses?

7 A. Yes.

8 Q. Okay. You mentioned the name of a man named Carroll
9 Ingram, correct?

10 A. Yes.

11 Q. He wasn't close kin, but he was kin to you, right?

12 A. Yes.

13 Q. And as I understand it, by 1979 he was an attorney in that
14 period of time, he was a practicing attorney in Hattiesburg,
15 right?

16 A. Yes.

17 Q. And in fact, how is he related, how is that relationship?

18 A. Oh, he's second cousin.

19 Q. Okay. And you watched the boy grow up?

20 A. Yes.

21 Q. You helped him when he was going to law school?

22 A. Yes.

23 Q. He was interested in politics pretty early in his career,
24 right?

25 A. Yes.

1 Q. And you helped him some in politics?

2 A. Yes.

3 Q. And he was elected to the legislature of the State of
4 Mississippi back in I think 1970, right?

5 A. I think that's when it was.

6 Q. Okay. And at a fairly young age?

7 A. Yes.

8 Q. And you helped him some in his reelection campaign as well,
9 right?

10 A. Yes.

11 Q. There were times you had some differences about politics,
12 but nothing terribly significant, right?

13 A. Right.

14 Q. You may have decided to back someone who he didn't back,
15 but that's politics, right?

16 A. Yes.

17 Q. Okay. And in, late part of 1970's, he was a practicing
18 attorney, had gone out on his own -- had he been with a firm at
19 one time before he went out on his own?

20 A. Had he what?

21 Q. Had he practiced with --

22 A. Yes.

23 Q. Who had he practice with?

24 A. Zachary and Weldy.

25 Q. Okay. That was in the early 70's, is that correct?

1 A. Yes.

2 Q. You at some point had a falling out with the senior
3 Zachary, is that right?

4 A. We had our differences, yes.

5 Q. In any event, Carroll left that firm and set up his own
6 firm, right?

7 A. Yes.

8 Q. And you gave him some business, I mean you were a client of
9 his, right?

10 A. Yes.

11 Q. Let me understand something. Later on there is some
12 falling out between you and Carroll, but back in those days
13 everything is fine, right?

14 A. Yes.

15 Q. And he, you looked to him for advice in certain areas where
16 he knew what he was doing, correct?

17 A. Yes, he was my attorney, and I depended on him.

18 Q. Okay. And he was also somebody -- let me withdraw that.
19 Let me ask you the question a different way. You were always
20 interested, I think you indicated yourself, you were interested
21 in the government of Mississippi, am I right?

22 A. Yes.

23 Q. Your attorney was a chairman of the judiciary committee of
24 the Senate, am I right?

25 A. Yes.

1 Q. You kept abreast, you kept current on what was going on in
2 the legislature, correct?

3 A. Yes.

4 Q. And you would stay, he was a contact for you, because you
5 could find out perfectly properly what was going on in the
6 halls of the legislature, right?

7 A. Yes.

8 Q. And as you say he was your attorney, and you relied on him?

9 A. Yes.

10 Q. Okay. And you had, you knew at the time, did you not, you
11 yourself were not in public life, you were never elected to
12 office, you never held public office, right?

13 A. Right.

14 Q. You were very successful by that time? By the late-70's
15 you were a very successful and rather wealthy man, is that a
16 fair statement?

17 A. Yes.

18 Q. Interested in politics?

19 A. Yes.

20 Q. Interested in government?

21 A. Yes.

22 Q. And interested in legislation that would help your business
23 as well, correct?

24

25

1 A. Yeah, would help Mississippi and of course --

2 Q. And you -- Go ahead. I'm sorry.

3 A. Help Mississippi, and of course as long as it wasn't
4 detrimental to my business, I would have tried to get something
5 done about it.

6 Q. We all try to do that. Right? There's nothing wrong with
7 that?

8 A. That's right.

9 Q. You hope what's good for Mississippi was good for Wiley
10 Fairchild and whatever you could to help that along, you would.
11 Correct?

12 A. Yes.

13 Q. And you knew a lot of, aside from Carroll Ingram, who was a
14 member of the legislature, you knew of a number of of people
15 who held public office. Right?

16 A. Yes.

17 Q. You knew governors of Mississippi?

18 A. Yes.

19 Q. Which governors? Who was the first governor you knew on a
20 personal business?

21 A. Oh, J. P. Coleman.

22 Q. Later became a judge?

23 A. Yes.

24 Q. Judge of the Fifth Circuit. Correct?

25 A. Yes.

1 Q. Which is the next highest court in the federal system.

2 Right?

3 A. Yes.

4 Q. Who else? What other governors?

5 A. Well, Governor Dodson, William Winter and Governor William
6 Waller.

7 Q. Okay. And you were on speaking basis with these people?

8 A. Yes.

9 Q. Okay. And on occasion, in fact, you even had some business
10 transactions with Governor Waller?

11 A. Yes.

12 Q. He was in some -- he made some investments with you.

13 Correct?

14 A. Yes.

15 Q. He invested in some oil and gas wells and he was successful
16 on some and some were unsuccessful. Right?

17 A. Right.

18 Q. You tried to make the investment hopefully good, but you
19 didn't always second. Correct?

20 A. Repeat the question?

21 Q. Surely. That's just what I want you to do, any time you
22 don't understand it, tell me. Over the years, prior to this,
23 prior to the 70's William Waller had made some investments in
24 the same oil wells that you were in. Correct?

25 A. Well, I put him in some, yeah.

1 Q. And he paid money for those investments?

2 A. Yes.

3 Q. And sometimes he made money and sometimes he didn't make
4 money. Correct?

5 A. Yes.

6 Q. Okay. Were there other people who you -- You used the
7 phrase, put him in the investment. These were usually leases,
8 oil leases that you owned or leased and you would sell him a
9 piece, a small portion. Is that right?

10 A. Yeah, but what we call royalty, override.

11 Q. You really are someone who's been in this business a long
12 time. Right?

13 A. Yes, sir.

14 Q. Tell the jury, when you say a royalty interest and
15 overriding interest, what does that mean? Explain it to them.

16 A. You got the royalty is one eighth, the land owner, when you
17 lease, you got to give him an eighth and you can give him a
18 sixteenth override or an eighth override and then if, in
19 Governor Waller's case, out of my leases, I carved him out an
20 override.

21 Q. An override?

22 A. Yeah.

23 Q. So they understand, what's the difference between the
24 royalty interest and an overriding royalty interest. Is there
25 any difference?

1 A. Just in name only. An eighth is an eighth.

2 Q. Just so we understand, there are obviously eighth eighths
3 to the whole mineral interest. Right?

4 A. Right.

5 Q. Seven eighths are owned by what we call the working
6 interest. Correct?

7 A. Yes.

8 Q. The one eighth belongs to the royalty holder. Right?

9 A. Right.

10 Q. Normally if Joe blow, if somebody, if I owned the piece of
11 land, correct, and I let you drill on it, I would hold the one
12 eighth royalty interest. Am I correct?

13 A. Yeah.

14 Q. You would have the seven eighths. Right?

15 A. Sometimes you give an override, but you got to give an
16 eighth royalty.

17 Q. I understand.

18 A. Right.

19 Q. Sometimes you lease, you can buy not only the working
20 interest, but the royalty interest as well, from the the land
21 holder. Right?

22 A. Yes.

23 Q. And many times that's what you do, you own all eighth
24 eighths. Right?

25 A. In some cases, yes.

1 Q. In any event there have been occasions, William Waller was
2 one, I take it there were other men -- Were there some other
3 men who held public office or people who you didn't do business
4 with on a day in day out basis whom you let investment, put
5 into investments?

6 A. There are probably some maybe I didn't put them in, but I'd
7 steer them, you know.

8 Q. You'd steer them to what would be a good investment.
9 Right?

10 A. Yes.

11 Q. And they would put up their money and either make money or
12 lose, depending upon whether you put them in a good investment.
13 Right?

14 A. Right.

15 Q. Okay. And they could put up money or they could go to the
16 bank and borrow and put up money. Right?

17 A. Yes.

18 Q. Okay. You have borrowed money throughout, in your life?

19 A. About 12 years ago.

20 Q. You haven't had to since?

21 A. No.

22 Q. You're a lucky man. Let's come back to the 70's. You told
23 us that at some point Carroll Ingram, he would see you, when he
24 wasn't up in the legislature -- Let me ask this first: There
25 was a portion of each year when the legislature was in session.

1 Right?

2 A. That's right.

3 Q. And do you know what part of the year that normally is?

4 A. Usually the first three or four months of the year is all
5 they're in session.

6 Q. So the legislature is in session right now this year?

7 A. Yes.

8 Q. Okay. And it's in session for three to four months and
9 then it goes out of session. Right?

10 A. Yes.

11 Q. And when it was in session, would you see Carroll if he was
12 up in Jackson for that period?

13 A. Yeah, when he was, when he was snort, I'd see him very
14 often.

15 Q. Even though he was up in Jackson, in session?

16 A. Yeah.

17 Q. Would you go up there to see him?

18 A. Well, yeah, I did occasionally or send somebody.

19 Q. Okay.

20 A. Or he'd come back here home on Saturday night and I'd talk
21 to him.

22 Q. Do you need some water? Would you like some water?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Okay. When he wasn't in session, would you see him fairly
2 regularly in Hattiesburg?

3 A. Yes.

4 Q. He would come to your office or you would call him on the
5 phone?

6 A. Or we'd meet, we would run into one another at the country
7 club.

8 Q. And some time, there came some point when he mentioned
9 Judge Nixon's name to you. Right?

10 A. Yes.

11 Q. By the way, did you know other judges besides Judge Nixon?
12 Had you heard of other judges?

13 A. Well, the state judges.

14 Q. Which ones?

15 A. Oh, Stanton Hall and Jack Weldy and Dicky McKenzie.

16 Q. Okay. Did you know any other federal judges?

17 A. Well, I knew Judge Coleman.

18 Q. He's the court of appeals judge?

19 A. Yes.

20 Q. After he was governor?

21 A. Yes.

22 Q. And when he mentioned Carroll -- Do you remember where you
23 were when Carroll Ingram mentioned Judge Nixon to you?

24 A. In my office.

25 Q. Okay. He came and saw you in the office. Right?

1 A. Yes.

2 Q. Probably there on some other business and you have a
3 conversation about this. Correct?

4 A. I don't remember him mentioning it, but there could have
5 been some other business. I don't remember.

6 Q. He mentioned to you, as I understand and you correct me,
7 that he knew Judge Nixon? Right? He told you he knew Judge
8 Nixon?

9 A. I knew he knew him.

10 Q. How did you know that?

11 A. Just general conversation.

12 Q. Okay.

13 A. Just general conversation.

14 Q. He was a friend of his. Right?

15 A. Yes.

16 Q. Lawyers have friends who are judges just like you have
17 friends who are junction. Right?

18 A. Yes.

19 Q. And when he mentioned it to you, is it fair to say that you
20 did not know Judge Nixon personally at that time. Right?

21 A. No.

22 Q. But everything you had heard about him was from your view,
23 you had only heard good things about Judge Nixon. Is that a
24 fair statement?

25 A. Well, not -- I hadn't heard nothing that I knew to be bad.

1 Q. Okay. And when he suggested, he says to you, as I
2 understand it, that Judge Nixon had mentioned that he would
3 like to make an investment and would he, Carroll, speak to you
4 about it. Right?

5 A. Repeat the question.

6 Q. What did Carroll say to you when he first mentioned that
7 Judge Nixon would like to make an investment?

8 A. He says I would like for you to put Nixon in a good oil
9 deal. He's got a bunch of kids and he's having a time with his
10 his finances or something. He needed to, he would like to get
11 in a good deal.

12 Q. Okay. Now you knew that judges, I mean he didn't have to
13 tell you this. He knew that judges get a salary. Right?

14 A. Yes.

15 Q. I take it, did you know that the salary of a federal
16 employee, you have to live within that budget, right, if you're
17 a federal employee, a federal judge?

18 A. I didn't know they had to live within that salary, no.

19 Q. What I'm saying is that's the money that's available for
20 them, that's the pay check they get?

21 A. Yeah.

22 Q. And when he told you this, did he mention to you words to
23 the effect that the Judge wanted, because he had these
24 children, who needed to be educated and that cost a lot of
25 money that he wanted to make some investments to supplement his

1 income? Do you recall Carroll talking to you about that?

2 A. Yes.

3 Q. That sounded to you like a reasonable thing for Judge Nixon
4 to want to do?

5 A. Well, I didn't question it. I just -- I didn't question
6 it. I just assumed that he was telling me the truth.

7 Q. Okay. You had no reason to doubt it. Right?

8 A. No.

9 Q. You didn't have any reason to think that Judge Nixon would
10 not have been telling the truth to Carroll Ingram. Right?

11 A. Repeat --

12 Q. I'll withdraw that question because that's a little
13 complicated. When he told you that, when Carroll told you that
14 on this first occasion, I take it you simply said, I'll be
15 happy to do that?

16 A. Or words to that effect.

17 Q. Okay. If I use some words that are little different than
18 what you recall, please correct me and try to tell me what your
19 words were. If what I say is accurate, we'll go on from there.
20 All right?

21 A. (Nods yes.)

22 Q. You indicated you would be happy to do something like that.
23 Am I correct?

24 A. Yes.

25 Q. And you don't have any idea, as you sit here, the date of

1 that conversation. Am I right?

2 A. No, I don't remember that.

3 Q. Would it be fair to say Carroll Ingram is a man some 30
4 years younger than you. Correct?

5 A. Yes.

6 Q. How old are you right now, sir?

7 A. 73.

8 Q. Okay. And Carroll is an attorney? Carroll is an attorney?

9 A. Yes.

10 Q. And I take it he would, he and you were the only ones who
11 had that conversation. Right?

12 A. Yeah, the initial conversation.

13 Q. That's what I'm talking about.

14 A. Okay.

15 Q. So if you don't remember when it was, we could go ask
16 Carroll to tell us what his best recollection of when that
17 happened. Right?

18 A. Yes.

19 Q. Okay. And I take it that you said you would look into it
20 and then it was a case of do you do anything immediately or you
21 just kept it in the back of your mind as something you were
22 going to take care of?

23 A. Oh, I -- I just was thinking about it and sometime later on
24 picked out these three wells.

25 Q. Okay. Do you remember that some period of time passed in

1 which Carroll mentioned it, you know, before you picked out the
2 wells, he reminded you that you had agreed to do that and you
3 hadn't got back to him yet. Do you remember that?

4 A. Well, I've got a faint remembrance of him jogging me up,
5 yes.

6 Q. When you say a faint remembrance of his jogging you up, it
7 was something that he had asked you to do, you hadn't gotten
8 around to it yet, just because you had a lot of other things on
9 your mind. Right?

10 A. (No response.)

11 Q. Am I correct?

12 A. Well, there was some reason that we hadn't gotten around to
13 it.

14 Q. You hadn't picked the wells out yet. Right?

15 A. Well, some time after Carroll come out there, it wasn't all
16 that, it wasn't, it wasn't a months and months after that.

17 Q. It was some period of time, but it wasn't the next day,
18 some time passed, Carroll had occasion to jog you on it a bit
19 and some time after that, you got around to sitting down and
20 deciding which wells. Right?

21 A. Yeah, I decided what wells.

22 Q. Now if there's one thing that you do, forgetting how good
23 your memory is on dates, you know the oil business pretty well.
24 Right?

25 A. Well, sometimes I think I don't, but I've been successful.

1 yes.

2 Q. And I think I heard you say there's been a lot of times
3 when a well that even was on stream, that you thought was going
4 to run, really be successful, was a bum, was just not a good
5 producing well. Correct?

6 A. Yes.

7 Q. Is it fair to say that if you're going to describe the oil
8 business in one word, you'd call it a gamble?

9 A. Right.

10 Q. It is a risky business. Right?

11 A. Yes.

12 Q. What that means is that your investment, there's a good
13 chance you will not recover your investment but if you're lucky
14 enough to hit a good well, you will do pretty well in terms of
15 the amount of money that's returned on your investment.
16 Correct?

17 A. Yes.

18 Q. Okay. Oil wells are extremely expensive to put into
19 operation, oil and gas wells. Right?

20 A. Yes.

21 Q. Okay. You had at that time, in 1980, let's say, 79, 80, in
22 that period, thousands of acreage in which you had royalty and
23 working interests, right?

24 A. Royalty and minerals, no working interests.

25 Q. And mineral interests.

- 1 A. Right.
- 2 Q. And they spread -- Some in Florida?
- 3 A. Yes.
- 4 Q. Alabama?
- 5 A. Yes.
- 6 Q. Louisiana?
- 7 A. Yes.
- 8 Q. Mississippi?
- 9 A. Yeah.
- 10 Q. What other states? Arkansas?
- 11 A. No, I don't -- We probably got some scattered or we bought
- 12 a spread of minerals, might have some up there. I don't know
- 13 whether we have or not.
- 14 Q. Okay. Are those the main states, Louisiana, Mississippi,
- 15 Alabama and Florida?
- 16 A. Yes.
- 17 Q. Anything elsewhere you have a lot of interest?
- 18 A. No.
- 19 Q. Of of those states, are some states better oil producing
- 20 states than others?
- 21 A. Yes.
- 22 Q. Of those states would Louisiana be the best?
- 23 A. Yes.
- 24 Q. Far and away. Right?
- 25 A. Yes.

1 Q. Second best is what?

2 A. Well, Mississippi and Florida would be about even, I would
3 say.

4 Q. So the last on the list would be Alabama?

5 A. Yes.

6 Q. Alabama, though, had a pretty good field over there in
7 Mobile County, Hatties Pond. Right?

8 A. Yes.

9 Q. That's where the Wilkie well was?

10 A. Yes.

11 Q. Right in the Hatties Pond. Right?

12 A. Yes.

13 Q. You had to make a decision as to which wells you thought
14 would be the right ones to put the Judge or let the Judge
15 invest in. Correct?

16 A. Yes.

17 Q. Now I take it, do you recall when you were talking to
18 Carroll, that one of the things he mentioned to you is that the
19 Judge had about, he was looking to invest about \$10,000. Do
20 you remember that figure?

21 A. He could have mentioned that but I don't recall him
22 mentioning that figure.

23 Q. You're saying he could have mentioned it, but you don't
24 have a specific recollection of it. Right?

25 A. No.

1 Q. You know that ultimately the investment was \$9,500. Right?

2 A. Yes.

3 Q. Okay. But you don't have, Carroll, I guess the person we
4 would have to go to for that is Carroll Ingram?

5 A. Yes.

6 Q. If he said he told it to you, that would be, you would rely
7 on that?

8 A. If he said he told me that the Judge had ten thousand he
9 wanted to invest, I would assume he was telling the truth.

10 Q. Okay. In any event you now had to pick out some wells from
11 all of the property you had, some I take it, had been producing
12 for a substantial period of time, some of your properties?

13 A. Yes.

14 Q. Some had been producing and were petering out?

15 A. Yes.

16 Q. They were on the down trend?

17 A. Yes.

18 Q. Some there was nobody on that land drilling a well in
19 particular units. Correct?

20 A. Yes.

21 Q. Some were in the process of being tested?

22 A. Yes.

23 Q. Some were in the process of putting casing in. Right?

24 A. Yeah, we got that going on today and all the time.

25 Q. But my point is on all of this inventory, all of this

1 acreage you have, they're all in different stages of
2 development at any point in time. Right?

3 A. Yes.

4 Q. Okay. What is it that went through your mind when you're
5 picking out which wells you thought might be good potential or
6 good prospect for him to invest in? How did you choose them?

7 A. Well, it's a judgment.

8 Q. I understand that. That's what you were called upon to do,
9 it was your judgment because you're so good at it, that you
10 were making that call. When I say that call, that judgment.
11 So what is it, just tell the jury what is it you thought about
12 that I'll pick this one and not the other one?

13 A. Well, you drill a well and you'd run electrical log and it
14 will tell you whether you get 60 to pay or 56 foot and then you
15 get the core analysis and you take all that and analyze it.

16 Q. Let me stop you just a second. You didn't do the drilling
17 on these wells. Right?

18 A. No.

19 Q. To get the core analysis, to get the logs, the drilling
20 logs, the electrical, what do you call them, the electrical
21 drilling logs?

22 A. Yes.

23 Q. You have to have signed a working interest. Right?

24 A. Yeah. Well, all these wells we had a working interest.

25 Q. I've looked at some of the files on the wells, so you

1 understand that?

2 A. Yeah.

3 Q. It's my understanding you didn't sign the working interest
4 agreement on the Wilkie well until February of 1981. Now do
5 you want to see that document or do you want to just take my
6 word for it?

7 A. I'll take your word for it.

8 Q. Okay. If you don't have -- If you don't have a working
9 interest 'til then, you wouldn't have had core results, you
10 wouldn't have seen the logs. Right?

11 A. Well, I was telling him I'd pay my way. There's other ways
12 of getting ahold of the logs and the core analysis.

13 Q. I don't doubt that. You have been in the business, there
14 may be somebody else may have a working interest in that same
15 field and they could loan you the information. No question
16 that happens. You have loaned it to other people?

17 A. Yes.

18 Q. If it's public information, you could go to the oil and gas
19 board in the county or the state. Right?

20 A. Yes.

21 Q. Okay. There are ways to do it. But as I understand it,
22 take the Ross well in Covington County, if you had simply
23 chosen that one well, you did choose that well as one of the
24 three, didn't you?

25 A. Yes.

1 Q. In fact he had the largest investment in that well, right,
2 five acres?

3 A. Yes.

4 Q. So the jury understand, the kind of interest we are talking
5 about, he simply had, when you calculated five ten thousandths
6 of your interest, correct, point 00057 and then it goes out to
7 29 different digits. Right?

8 A. It was a very, very small amount of my interest.

9 Q. Okay.

10 A. I don't remember the decimal figures.

11 Q. We could figure that out by looking at the division orders.
12 Right?

13 A. Sure.

14 Q. No problem at all. In any event, if you had simply chosen
15 the Ross well in Covington County right near here, he would
16 have lost money, if you hadn't put him in the other two as
17 well. Correct?

18 A. Well, I hadn't figured it up but it wouldn't have made no
19 money, no.

20 Q. It wouldn't have made no money, all right. If he wouldn't
21 have made no money, the best he could do is break even?

22 A. Like I say, I haven't put the figures to it but it would
23 have been a bad investment.

24 Q. By the way, when you were choosing it, you didn't choose it
25 because it was a bad investment, you thought it was a good

1 investment?

2 A. Yes.

3 Q. In fact that's the one you gave the greatest acreage in,
4 five in that, three in each of the others. Right?

5 A. Yes.

6 Q. Your judgment was wrong on that one well. Right?

7 A. Yes.

8 Q. You have been wrong before, you will be wrong in the
9 future, but you usually do more guessing or judging right than
10 wrong. Correct?

11 A. Yes.

12 Q. But that was one well you put in, that you chose. Right?

13 A. Yes.

14 Q. And it just looked like one that in your judgment, your gut
15 feeling, was that well could produce, that could be a good
16 well. Right?

17 A. Yes.

18 Q. Let's understand something. Every well that you are going
19 to allow the Judge to invest in, you are going, you are in
20 effect predicting your own success in the same well, because he
21 only has a fraction of what your interest is. Right?

22 A. Yes.

23 Q. Okay. And you picked that well in Simpson as one -- That's
24 the county, you were born in that county, right?

25 A. Yes.

1 Q. Up in Seminary. Right?

2 A. Yes.

3 Q. All right. You knew that county and the oil potential in
4 that county pretty well?

1 A. Yes.

2 Q. You also picked out one in Marion County, that's the Rogers
3 well, right?

4 A. Yes.

5 Q. Just so we understand, every well has a name to it, right?
6 Could give it a number, but basically they have names and some
7 way goes back to who originally owns the land or something like
8 that, right?

9 A. Who originally owned the land, that's right.

10 Q. You picked out the well in Marion County also, right?

11 A. Yes.

12 Q. And you were as hopeful that the Marion well would do well
13 as you were with the Ross well in Covington, right?

14 A. Yes.

15 Q. Then you picked out a third one, not in Mississippi, but in
16 Mobile over at Hatters Pond, right?

17 A. Yes.

18 Q. I pronounced it correctly, Hatters Pond?

19 A. Yes.

20 Q. You were optimistic, you felt good about that, about that
21 possibility?

22 A. Yes.

23 Q. And there you did the same thing, you gave him a three acre
24 interest, right?

25 A. Yes.

1 Q. When we say three acres, it's three acres which is a
2 fraction of the total unit, which is like 640 acres, right?

3 Q. Yes. A unit, traditionally, 640 acres, right, square
4 acres?

5 A. Yes.

6 Q. And so it's really, if you give someone three, it's three
7 into the 640, multiplied by the one eighth, right, to come up
8 with his share, correct?

9 A. His would be -- a unit consists of 640 acres which has 5120
10 equivalent royalty acres. And he got three of that.

11 Q. Three of 5100 royalty acres, right?

12 A. Yeah.

13 Q. We end up with the same calculation coming at it from a
14 different way?

15 A. Yes.

16 Q. In any event, you sat down -- I take it by yourself, you
17 didn't have to talk to anybody else to decide which of these,
18 Carroll is not going to be of any help, he doesn't know
19 anything about oil wells, right?

20 A. I don't think he knows much about them.

21 Q. Law books he may know something about, oil wells forget it?

22 A. He's dabbled in it a little bit.

23 Q. But that's it. You would have made the call, the judgment
24 by yourself as to which wells would be the right ones to have
25 Judge Nixon invest in, right?

1 A. Yes.

2 Q. Okay. And do I understand correctly the reason you put him
3 in not just one well, but in three, to spread the risk?

4 A. Yes.

5 Q. It's a logical thing to do, isn't it? In case one or two
6 of them didn't, weren't successful, weren't producers,
7 hopefully the third would be?

8 A. That's the reason I put him in three wells.

9 Q. And you made that judgment, and then I take it you told
10 Carroll, right?

11 A. Yeah.

12 Q. Okay. And you told him, what, the well, such and such a
13 name in Marion, Ross in Marion, Rogers in Covington, and Wilkie
14 in Mobile County, right?

15 A. Yeah.

16 Q. You told him the amount of acreage that you were going to
17 give, to assign to Judge Nixon, correct?

18 A. Yes.

19 Q. All right. And once again, did this, did you call him to
20 tell him this, Carroll I'm talking about, or did you happen to
21 see him in your office, if you recall?

22 A. I don't recall.

23 Q. But you gave him that information in some way?

24 A. Yes.

25 Q. At that point, we know that there is going to be a period

1 of time that's going to pass between that and the date that the
2 actual deeds were drawn up, but when you first told Mr.

3 Carroll, did you expect that he would draw up the deeds or did
4 you think it would be done in your office?

5 A. Well, I was depending on Carroll and it was my hope that he
6 would draw up the deeds.

7 Q. Okay. So you're sitting there thinking that now that
8 you've given the information, you've given them all of the key
9 information, you've told him which wells, right?

10 A. Yeah.

11 Q. You've told him I take it he can check with your office --
12 let me just stop a minute. Carroll dealt with your office
13 staff pretty frequently in terms of legal business he had
14 there, right?

15 A. Yes.

16 Q. He knew he could get the description of the property from
17 your staff, correct?

18 A. Yeah.

19 Q. You had given him the acreage, told him the location, and
20 he knew, everybody knew who the grantee was going to be, who
21 was going to be getting the assignment was Judge Nixon, right?

22 A. Yes.

23 Q. So it was just a case of waiting, you were sitting back
24 waiting for the deeds to be prepared by Carroll, right?

25 A. That's my recollection, yes.

1 Q. Okay. Apparently Carroll was doing nothing to prepare
2 them, he thought you were going to prepare the deeds in your
3 office, or have your office prepare it, correct?

4 A. That could have been the way.

5 Q. Okay. If there is any doubt about it you tell us, okay?
6 But it's my understanding, you've told us that you were waiting
7 for him to do it, and we know he didn't do it, right, because
8 ultimately your office prepared the deeds, correct?

9 A. Ultimately, yeah.

10 Q. Long period of time went by between the time you told him
11 the particular wells and the actual preparation of the deeds,
12 right?

13 A. I don't remember how long a time went by.

14 Q. You have absolutely no recollection as to how much time
15 went by, right?

16 A. Well --

17 Q. That's all right.

18 A. It wasn't years. It was some time.

19 Q. No problem. It wasn't something that was of great concern
20 to you and thinking back, some period of time went by but you
21 don't have any idea of how long, right?

22 A. I wasn't concerned about it.

23 Q. Fine. And I take it that there was then some discussion at
24 which -- let me stop there. There is nothing else you have to
25 do. The division orders would come later, anything else would

1 all occur after the assignment, right? All that had to be done
2 at that point was the preparation of the deeds and the payments
3 to you or the signing of notes by Judge Nixon, correct? That's
4 the only thing waiting to be done, right?

5 A. Assigning of the deeds and getting them on record and
6 getting them to the people that was operator of the wells.

7 Q. Okay. The wells were Getty, am I right, Getty was -- Getty
8 Oil could was on the Wilkie well?

9 A. Right.

10 Q. Union was on which well, Covington?

11 A. Covington.

12 Q. And Exxon was drilling the Marion County well, the Ross
13 well?

14 A. I don't remember, I don't think it was Exxon. Could have
15 been.

16 Q. It was some third company?

17 A. Yeah.

18 Q. And they would be doing the drilling, they would be letting
19 you know what the progress was, et cetera, right?

20 A. Yes.

21 Q. Since you had the working interest, they were all -- you
22 know what an AFE is?

23 A. Yes.

24 Q. Tell the jury what it is?

25 A. They send an AFE, that's what it's called, but they got a

1 breakdown how much it's going to cost to drill and complete
2 this well.

3 Q. Okay. They were telling you as the working interest owner
4 how much they're going to pay, tell you what the expense is
5 calculated to be to drill this well, to take it to a certain
6 point, and what is expected if you want to participate, how
7 much it's going to cost you as well, correct?

8 A. That's right. It's just, it's an estimate.

9 Q. Okay. And those estimates on drilling wells go into the
10 many millions of dollars to drill wells, right?

11 A. Yes.

12 Q. In fact, one of these -- which one cost 7 million dollars
13 to drill?

14 A. Wilkie.

15 Q. Seven million just to drill it?

16 A. It was real expensive, I don't remember. Taken them a long
17 time to drill it.

18 Q. In any event, you indicated, you answered some questions
19 before as to what you thought the value of this property, of
20 this property was. You're not going anyplace, are you?

21 A. No.

22 Q. You told us what you thought the value of the property was
23 in February of 81, and you were asked what the value of that
24 property would have been when you originally told Carroll about
25 it when you picked it out. You said it was far less, correct?

1 A. Yes.

2 Q. I take it you said it was about, you came up with a pure
3 judgment figure, 26 to 28 thousand in 81. I take it from what
4 you've said on other occasions, ninety-five hundred, as a price
5 back around 1980, would have been what was then the market
6 price at that time in your judgment?

7 A. Now I'm confused.

8 Q. If you're confused, then I have to straighten it out then,
9 okay. The value of the well in 1980 -- let's talk about it
10 hypothetical. If you have a well today that's been drilled,
11 it's going, it's worth more today than it was when you first
12 began testing a year ago, okay?

13 A. Yes.

14 Q. The value a year ago might be one third of what it is
15 today, correct?

16 A. Yes.

17 Q. If you go back when it was just raw land, soybean field,
18 even though you owned it, it may have been worth only a
19 fraction of what it was when you began testing, correct?

20 A. Yes.

21 Q. You bought generally speaking these wells or the interests
22 in these wells for about two to three hundred dollars an acre,
23 right?

24 A. Yes.

25 Q. Back in the mid-70's, right?

1 A. Yes.

2 Q. Sort of, all you did was buy just land. There was no,
3 nothing pumping there, nobody is testing, nobody is interested
4 at that time? You speculated when you first bought it that
5 someone is going to come along and want to drill for oil,
6 right?

7 A. Yes.

8 Q. When you sold them that interest, or fraction of the
9 interest to Judge Nixon, you sold it to him for about seven
10 hundred times profit you made on the wells, is that right?

11 A. Yes.

12 Q. In fact, you prepared a document at one time showing that,
13 correct?

14 A. Yes.

15 Q. Okay. So you made not millions of dollars by any means,
16 but if you had paid, by my calculation, something in the
17 neighborhood of three thousand for that interest, you sold it
18 to him for nine thousand five hundred, correct?

19 A. (No response.)

20 Q. We're talking about eleven acres, using a number like 250
21 dollars?

22 A. If you want to compare it to what I'd paid.

23 Q. You've seen it, you prepared a document, because you knew
24 this was this case, right?

25 A. Yes.

1 Q. Okay. You sold it to him at a profit, you paid. I assume
2 you would have paid tax on whatever that profit was, right?

3 A. Yes.

4 Q. Okay. And at the time when you set the price and picked
5 the acreage it was far, the value of the was less than the
6 value in February of 1981, correct? You understand my
7 question?

8 A. It was worth, as the time goes on it's worth so much now,
9 it's worth more later on.

10 Q. Right. So in 1980 it was worth something less than it was
11 worth in 1981?

12 A. Yes.

13 Q. So if you told Carroll in the very end of 79, even the
14 beginning of 1980, which wells and how much acreage it was and
15 you didn't get around to preparing the deeds until February of
16 81 when you told Carroll what, which acreage it was, and set a
17 price, that price of course would be less than the price you
18 would put on it, or the value you would put on it a year later,
19 correct?

20 A. In this particular, this particular wells, I don't remember
21 the exact time that I -- I don't remember putting a price on
22 the wells myself. I could have, but I just don't remember
23 that.

24 Q. In this transaction, there is only two people involved,
25 Judge Nixon, you told us, I heard you say it, you had no

1 discussion with Judge Nixon as to the price, right?

2 A. No.

3 Q. The only person you talked to is Carroll Ingram, right?

4 A. And Skip Jarvis.

5 Q. Well, Skip Jarvis doesn't advise you on price; you may have
6 told him what the price was going to be, but you set the price,
7 correct?

8 A. I don't remember, and I could have, but I don't have -- I
9 don't remember.

10 Q. That's fine.

11 A. And --

12 Q. Go ahead?

13 A. I was depending on Carroll Ingram, he's my attorney.

14 Q. No problem. I understand. You set a price, and I take it
15 you indicated that you thought that the wells were on line in
16 1981, right? Am I using the right phrase? If they were
17 producing they are called on line?

18 A. Yeah.

19 Q. On stream or on line?

20 A. Both terminologies is correct.

21 Q. Okay. You indicated you thought that in February of 81
22 when those deeds were prepared that the wells were producing,
23 correct?

24 A. Yeah.

25 Q. Okay. Tell the jury, though, before we come to that, what

1 is it that makes drilling of oil and gas, what is the problem?
2 Why is it so speculative, aside, one problem is you come up
3 with a dry hole, right?

4 A. Yes.

5 Q. Even there are times you drill, look at your logs and your
6 core analysis, and it looks like it could be okay, right?

7 A. Yes.

8 Q. Sometimes it looks terrific, right?

9 A. Yes.

10 Q. And what looks terrific turns out to be a dud, right?

11 A. Yeah, I've been in wells like that.

12 Q. Tell the jury why. What is it about the mechanics of
13 drilling a well, even when it looks likes it's going to be good
14 that you can't tell that it's a good well until it has produced
15 for how long a period before you can really judge?

16 A. Well, I hasn't thought of it exactly that way. But I know,
17 I've had working interest in a well, we'll drill it, cost
18 couple million dollars, and -- to drill and complete, cost
19 hundred, or million dollars to complete, put it on stream, and
20 maybe not get fifty thousand dollars out of it.

21 Q. In other words, you do all this work, million bucks, a
22 million bucks from the point of testing to completion or the
23 whole cost of putting it on stream is a million, the example
24 you just gave?

25 A. Well, that's very rare. It happens, but it's very rare.

1 Q. I understand. But what I'm asking you, there are times
2 that the well starts to produce?

3 A. Yes.

4 Q. And then something goes wrong?

5 A. Yes.

6 Q. That happens a lot of times, right?

7 A. Yes.

8 Q. Problems with the cement, the casing not holding right,
9 correct?

10 A. Well that is some of the problem, but --

11 Q. Okay. Tell the jury about saltwater? What's the problem
12 with saltwater even in a producing well?

13 A. Well, you don't know how big the reservoir in there, you
14 have to water drive, and you got to water drive, it's saltwater
15 down here, the oil here, start producing, you get the oil out,
16 here comes the saltwater.

17 Q. Tell the jury how much you can sell saltwater for.

18 A. Well, it costs about three hundred dollars a truck load to
19 dispose of it.

20 Q. You mean you just give it away, no market for saltwater?

21 A. No.

22 Q. Okay. In any event, that is a, not every well ends up with
23 that problem, but it is a potential problem for anyone who has
24 a well and is drilling it, correct? Where it's on stream in
25 the early stages, correct?

1 A. Yes.

2 Q. There are, we could go through them, there are any number
3 of problems, mechanical in nature, which could make the well
4 unsuccessful, correct?

5 A. Yes.

6 Q. Not only that, we have another major problem which
7 everybody knows about, price of oil, right?

8 A. Yes.

9 Q. In the last three years, you correct me if I'm wrong, it's
10 gone, some place it's fluctuated from 40 dollars a barrel down
11 to 6 dollars? You tell me, you know it better than I do.

12 A. Mine hadn't. It's went from 42 dollars and something a
13 barrel down to, on spot market yesterday it was 18 dollars a
14 barrel.

15 Q. Okay. Pretty serious, I overstated, six I guess would be
16 gas, not oil, right?

17 A. 6 dollars a thousand for gas, but now, used not to be a
18 good price, but that's a really good price now.

19 Q. Six is good now?

20 A. No. Six would be good.

21 Q. You can't get it now?

22 A. No.

23 Q. That has a direct bearing on how good or how successful
24 even a producing oil or gas well will be, correct?

25 A. Yes.

1 Q. These wells basically produce both oil and gas, right?

2 A. Your oil well produces more oil than gas, gas well produces
3 more gas than oil.

4 Q. Okay. If I understand correctly, let's just -- Skip Jarvis
5 came to you as we understand it, I take it you're not being
6 good on dates, you wouldn't remember precisely when he came?

7 A. No.

8 Q. He was here yesterday, right?

9 A. Right.

10 Q. You didn't have much to do with him when he came back to
11 town, did you?

12 A. No.

13 Q. If you never see him again it wouldn't be too soon, would
14 it?

15 A. No.

16 Q. Okay. He says he worked for you, at least the one thing he
17 said we think is accurate, he went to work in August of 79.
18 That sound about right?

19 A. Yes.

20 Q. He worked, you put him to work on your staff, seemed nice
21 enough, he was going to do things you needed to be done in the
22 office basically, right?

23 A. Yes.

24 Q. That's what his function was, he wasn't, he wasn't Wiley
25 Fairchild, he didn't have the experience in the oil and gas

1 industry, he didn't make the judgment calls that you made,
2 correct?

3 A. That's right.

4 Q. Okay. One other thing. I want to come then to 19 --
5 around February 81, the deeds haven't been prepared yet. And
6 nothing has happened in terms, you've already made a deal to
7 give certain amount of acreage -- three in Marion, five in
8 Covington, three in Mobile, to assign those to Judge Nixon but
9 to assign them, to sell it to him you have to prepare a
10 document, right?

11 A. Yes.

12 Q. Handshake isn't enough, you have to have a document, right?

13 A. Yes.

14 Q. Before we go on, I just wanted to ask you something. Are
15 you sure that those wells were producing at the time, even in
16 81?

17 A. I couldn't swear that they was, but I think they was.

18 Q. One way we could tell, couldn't we, is if we took a look at
19 the records of the oil and gas board, because every well must
20 file of record the gas production and oil production with the
21 county or the state, correct?

22 A. That's right.

23 Q. All right. Let me show you something if I might. Could I
24 have an Exhibit 10? You've seen these before, haven't you, oil
25 production records?

1 A. The completion report?

2 Q. Not the completion report. The completion report is simply
3 a report, is it not, that is filed, required by law, to show
4 the date of completion, the depth of drilling, the thickness of
5 the casing --

6 A. Yeah, yeah.

7 Q. But there is a report that is filed by the producing
8 company, Exxon, on the Wilkie 28, okay, Hatters Pond, and it
9 shows you the gas production, right, and oil?

10 A. Yeah.

11 Q. Here's the year 1980, and here's where they tested it in
12 June and July, you see that?

13 A. Yes.

14 Q. Nothing before that, did some testing, June and July,
15 right, of 80?

16 A. Yes.

17 Q. Not a drop in August, September, October, November,
18 December, am I correct?

19 A. Yes.

20 Q. Now let's go to 81. January, tell me, how much oil and
21 gas?

22 A. None.

23 Q. February?

24 A. None.

25 Q. March?

1 A. None.

2 Q. April?

3 A. None.

4 Q. May?

5 A. None.

6 Q. June?

7 A. None.

8 Q. July?

9 A. None.

10 Q. August?

11 A. None.

12 Q. September?

13 A. None.

14 Q. October we finally go on stream, am I right?

15 A. Yeah.

16 Q. Okay. Now, you had not memorized the facts that you
17 testified to, but I take it, having seen this exhibit, you now
18 see that the well, the Wilkie well in Mobile was not on stream
19 until October of 1981, right? Is that correct?

20 A. Then reports, if that come from their oil and gas board of
21 Alabama, they are, I'd accept them as being correct.

22 Q. Fine. I take it then that it was just that you were in
23 error in the sense that you thought it might have been on
24 stream, but it wasn't, because the report makes clear it wasn't
25 on stream for one, two, three, four, five, six, seven, eight

1 months after February 21, correct?

2 A. Yeah.

3 Q. Enough can happen after it goes on stream, it's a lot more
4 speculative investment before it's put on stream, correct? Do
5 you understand my question?

6 A. Repeat it.

7 Q. A well that has not gone on stream yet is a much, is even
8 riskier than one that is on stream in its early stages,
9 correct?

10 A. That's correct.

11 Q. Here we have a well in February of 81, it doesn't go on
12 stream for another eight months, correct?

13 A. Correct.

14 Q. All right. So much for Wilkie. You want to go through the
15 rest to take a look at the oil and gas -- you didn't really
16 know whether they were on stream in February of 81 or not, did
17 you?

18 A. No.

19 Q. You were using your best estimate, not guessing, but trying
20 to recollect, you seem to have been in error, correct?

21 A. I will say I was in error.

22 Q. Okay. You have similar documents, don't you, in
23 Mississippi? There are filings, what do you call the board
24 here in Mississippi? Do you have to file?

25 A. State oil and gas board.

1 Q. You file what's called a Mississippi oil and gas monthly
2 production ledger, correct?

3 A. Yeah.

4 Q. You've seen plenty of those, right?

5 A. Yeah.

6 Q. All right. Let me show you, let's mark it Defendant's
7 Exhibit 21. Let's show it to the government. Now we'll show
8 it to you. This is for the Rogers well -- by the way, this log
9 or this ledger is for many different fields, is it not? You've
10 seen these documents before, correct?

11 A. Yeah.

12 Q. Let's look at the one, we're talking about Green's Creek
13 Field, isn't that the one? There is the Rogers well, Marion
14 County, no question we have the right well, right?

15 A. That's right.

16 Q. Okay. Now we're going to look at what have we got up
17 through the beginning of 81? In other words, anything produced
18 before the first month of 1981, tell the jury how much oil and
19 gas had come out of that well up until that time?

20 A. None.

21 Q. Which means --

22 A. According to this report.

23 Q. You don't have any doubt any more about the report?

24 A. No.

25 Q. It had not been put on line yet, right?

- 1 A. No.
- 2 Q. Let's go then, this report is for the year 81. They told
3 you what happened, cumulative figure you've just read from?
- 4 A. Yes.
- 5 Q. January it wasn't on line, right?
- 6 A. January when?
- 7 Q. 1981?
- 8 A. Yeah.
- 9 Q. February it wasn't on line?
- 10 A. No.
- 11 Q. And March it wasn't on line?
- 12 A. No.
- 13 Q. So it doesn't go on line, a little bit of production in
14 April we see it on line, that's when it goes on line, right?
- 15 A. Yeah.
- 16 Q. That's three months after February of 1981, correct?
- 17 A. Yes.
- 18 Q. Two months. Two and a half months, correct?
- 19 A. Right.
- 20 Q. So at least as to these two wells you were in error,
21 perfectly — you know you're human, aren't you? You can make
22 errors in judgment, your recollection, correct?
- 23 A. I'm saying them was, that I was in error, yeah.
- 24 Q. All right. Fine. The records are in effect the best
25 evidence of when the wells went on line, right?

1 A. Yes.

2 Q. Okay. We could show you the Ross well, but what do you
3 call a bad well in the business? One that doesn't produce?

4 A. Well, the Ross is one of them, it produced, but it just
5 wasn't what it was supposed to be.

6 Q. Never got your money back on that well?

7 A. Well, I leased mine out and take an override in it, and I,
8 of course, didn't put up no drilling on it. I own a lot of
9 minerals under it. The folks I leased to hadn't got their
10 money back.

11 Q. And I take it, you're aware, are you not, that Judge Nixon
12 paid two thousand dollars plus interest for that, for the
13 interest to be assigned on the Ross well, correct? Do you
14 remember how much he paid for each one?

15 A. No.

16 Q. Well, we have the notes?

17 A. Yeah.

18 Q. Let me refresh your recollection. The Ross well in
19 Covington, two thousand dollars; the Rogers well in Marion,
20 three thousand dollars; and the Wilkie well, four thousand five
21 hundred, okay?

22

23

24

25

1 A. Yeah.

2 Q. All right. And the Ross well is the two thousand. Do you
3 recall whether he even -- Did he make money or lose money on
4 that?

5 A. Well, I haven't run up the figures. They will speak for
6 themselves.

7 Q. Those were the ones with the checks for a dollar 50, five
8 dollars?

9 A. Yeah.

10 Q. Would it be fair to say he lost money or do you want to
11 check it out?

12 A. Well, just from my judgment, reading them checks, I would
13 think he had lost money.

14 Q. And he made money on the other wells. Am I correct?

15 A. Yes.

16 Q. Made a nice profit on the other wells?

17 A. Yes.

18 Q. If those wells, though, had done, there were no line, even
19 in February of 81, if they had done like the Ross well, you
20 would have been an unhappy, you would have felt unhappy in
21 putting him in those kind of investments. Correct?

22 A. Yes.

23 Q. You were happy to see him make some money on these
24 investments. Right?

25 A. Yes.

1 Q. When he sent the checks in payment of these interests, you
2 put them in your -- I assume they were deposited in the normal
3 course as part of your business. Right?

4 A. Yes.

5 Q. Including the interest?

6 A. Yes.

7 Q. Ten percent interest. Right?

8 A. I don't recall the interest. Whatever the note says.

9 Q. Okay.

10 A. That's what he paid.

11 Q. Whatever was going at the time. Is it fair to say that you
12 got, I'm not interested in prying into your personal assets or
13 your personal wealth, but if it comes down to a bank making ten
14 percent or Wiley Fairchild or one of his companies making ten
15 percent interest, you would rather make the ten percent
16 yourself. Correct?

17 A. Yeah.

18 Q. No problem with that. Correct?

19 A. (Nods yes.)

20 Q. Okay. In February of 1981, you must have in some way, I
21 take it, since you were sitting there for a substantial period
22 of time, waiting, thinking that Carroll was going to take care
23 of this, in some way you must have realized that it had to be
24 prepared in your office. Correct?

25 A. (No response.)

1 Q. Because that's where it was prepared?

2 A. Yeah, it was prepared in my office.

3 Q. Well, if it was prepared in your office, somebody had to
4 give the instructions to prepare it, I think that had to be--
5 you?

6 A. Well, yes, I would say that.

7 Q. Sure. And you told Skip Jarvis to prepare it. Right?

8 A. Yeah.

9 Q. And he did. He prepared the first --

10 MR. FAWER: Could I have -- What's the number of your
11 exhibit, the --

12 MR. WEINGARTEN: Eight, nine and ten.

13 MR. FAWER: Eight, nine and ten. We have them right
14 here. Excuse me. Let me give you these back for the time
15 being.

16 BY MR. FAWER:

17 Q. Here, let's just look at this. That's eight, nine and ten.
18 You don't have to read them over very carefully, but what I
19 wanted to show you, these are the deeds we understand you asked
20 Skip to prepare. It's the kind of thing he did, you would give
21 him a instruction and he would go get some typist or secretary
22 to type them up. Correct?

23 A. Yes.

24 Q. You told him to, I take it you must have told him not to
25 put the name of Walter Nixon on it. Right?

1 A. (No response.)

2 Q. To leave it blank?

3 A. I think Carroll Ingram told him that.

4 Q. You think Carroll was there?

5 A. Not when he was -- not when it was -- not when they was
6 being typed up, Carroll wasn't there.

7 Q. Well, --

8 A. I just remember something about it. He didn't know whether
9 he wanted his name or he wanted it in his wife's name or what.

10 Q. Let me ask you, let me suggest something to you. Let me
11 ask you a question. Before February of 81, you knew of a man
12 named Judge Nixon. Right?

13 A. Yeah.

14 Q. Isn't it a fact that you really didn't know what his full
15 name was? Did you know his full name then?

16 A. No.

17 Q. So how would you even, if you wanted to fill in the blanks,
18 how would you have filled it in?

19 A. I would have called -- Asked Skip here to fill this out to
20 Judge Nixon.

21 Q. Left it blank?

22 A. (No response.)

23 Q. No, he left it blank, they're blank, aren't they?

24 A. Yeah, they're in blank.

25 Q. There's nothing wrong with them being in blank, is there?

1 A. No.

2 Q. You have given instructions any number of times when you
3 were making assignments to leave the grantee of the document or
4 assignee in blank. Correct?

5 A. Yeah, I've done it and I could have done it here, but I
6 don't remember it.

7 Q. We are dealing with your memory which is only as good as it
8 can be and you're trying to do the best that you can. Right?

9 A. Yes.

10 Q. And you told him to put down, he filled it out according to
11 your instructions. Right? Skip tried to do what you told him
12 to do?

13 A. Yeah.

14 Q. And then he brought it back to you for your signature.
15 Correct?

16 A. Yes.

17 Q. Now apparently, as I understand it, later on there was some
18 problem as to who, whether it was you personally or the
19 corporation, who really held the interests but, as a practical
20 matter, at the time, you just signed your name and it was
21 witnessed by Jarvis and Sherry Barnett who worked in the
22 office. Correct?

23 A. Yeah.

24 Q. All three, put them in an envelope, you told Skip to bring
25 them over to Carroll. Right?

1 A. I think so. Yeah.

2 Q. Okay. Brought them over to Carroll and as far as you knew,
3 that should have been the end of it. Right?

4 A. Yes.

5 Q. But instead, you got a call from Carroll. You remember
6 that?

7 A. (No response.)

8 Q. If you need to be refreshed on it, just ask me.

9 A. I don't remember getting a call from Carroll. I remember
10 Skip saying Carroll brought the deed back and said back date
11 it.

12 Q. Well, let's look at the facts and see what we can learn by
13 whatever appears on the document. Skip has told us that he
14 sent them over, brought them over, he had overriding royalty
15 deeds, he had them notarized, prepared just as you see them.

16 A. Yes.

17 Q. Put them in an envelope and you had already left for the
18 day and left it with you. You must have then sent them over to
19 Carroll some way. Okay? No problem with that?

20 A. I probably did.

21 Q. Well, what's the next thing we know? This document
22 apparently has been, I don't know, there's been water on it or
23 something, but it says something very clearly, let me show it
24 to you, so you can read it too. It comes back to your office,
25 that's your name, Wiley Fairchild on it?

1 A. Yes.

2 Q. Personal and conf -- C-O-N-F; that means confidential.
3 Right?

4 A. Yeah.

5 Q. It's signed Carroll Ingram. Correct?

6 A. Yeah.

7 Q. Am I correct something comes back to your office marked
8 personal and confidential, it's not going to be opened by
9 anybody but Wiley Fairchild?

10 A. That's right.

11 Q. Okay. Therefore, you must have, wouldn't it be likely that
12 when you get this information back you have already spoken to
13 Carroll about the need to change the documents?

14 A. Yeah.

15 Q. Well, there's further proof of that. That's your
16 handwriting up there in blue. Skip, identified this as your
17 handwriting.

18 A. I don't think it is. It could be.

19 Q. Well, okay. I haven't seen your handwriting before, but
20 Skip seems to indicate that it is. I have no reason to doubt
21 that fact. It says Marion --

22 MR. WEINGARTEN: I would like an objection. I object
23 to defense counsel pointing out other testimony to a witness on
24 the stand. I think that's improper. I also suggest it's
25 improper for the defense counsel to offer his opinion about

1 that evidence.

2 MR. FAWER: My opinion? Your Honor, I haven't given
3 any opinion of the evidence.

4 MR. WEINGARTEN: He just gave his opinion on the
5 credibility of Skip Jarvis' testimony.

6 MR. FAWER: Excuse me. So we can cut through this,
7 Mr. Weingarten introduced this document on the Mr. Jarvis'
8 express words that this is Mr. Pairchild's document. Now I'm
9 pointing out the precise same thing.

10 MR. WEINGARTEN: And I'm expressing an objection to
11 the form of the questions.

12 THE COURT: If he can remember, go ahead, fine. If
13 he can't, go on. It doesn't make any difference, anyhow.

14 MR. WEINGARTEN: It does make some difference, Your
15 Honor, because of what's right next to it.

16 THE COURT: All right. Let him answer if he knows.
17 If he doesn't, let him say.

18 MR. FAWER: Fine.

19 BY MR. FAWER:

20 Q. You have the words, Marion, Covington, Mobile, slightly
21 will I misspelled but let me ask you a question?

22 A. Yes.

23 Q. I'm not being critical, you're a successful man, but are
24 you a particularly good speller?

25 A. No.

1 Q. I notice next to Marion it says three, next to Covington,
2 it said three but it was changed to a five. You see that?

3 A. Yeah.

4 Q. And next to Mobile it says three again. Right?

5 A. Yeah.

6 Q. Okay. Now let's think of what this all means. Do you
7 recall Carroll calling you and telling you two things; he had
8 gotten these documents from you, already notarized, and he said
9 there's two problems; one, is you didn't put down on the
10 documents the right amount of acreage. It shouldn't be one
11 acre for each because he remembered what you had told him back
12 when you first picked out the well that it was three, five and
13 three. Do you remember that now?

14 A. Well, I just remembered there was a discrepancy in there.

15 Q. Do you recall him, that was why he had to send them back to
16 you. You had already told him the wells, told him the amount
17 of acreage but you had Skip put the wrong amount on the
18 original deed. Do you remember that?

19 A. Well, if Carroll says that that's the way it was, I would
20 say that's true.

21 Q. Well, I'm not Carroll and Carroll hasn't been brought in
22 here yet. But what I'm trying to do is refresh your
23 recollection as to what occurred.

24 A. Yeah, I would have had to have been the one to change the
25 acreage in each well.

1 Q. Okay. And it was based on Carroll reminding you of what
2 you had decided and told him back when you picked out the
3 wells. Okay?

4 A. It would have been somebody would have reminded me it
5 wasn't correct and the --

6 Q. The only person in the world who could remind you is the
7 only person you had ever told it to, Carroll Ingram. Right?

8 A. Yes.

9 Q. Okay.

10 A. I would say that's correct.

11 Q. Then he told you one other thing, he said, you know, the
12 date on the deed is February 1981. Am I right? That's what
13 Skip had filled in?

14 A. Yeah.

15 Q. Do you recall him telling you that the arrangement, that
16 the deal had been made almost about a year earlier? Correct?

17 A. I don't recall telling him almost a year earlier.

18 Q. Him telling you, he told you that the date should be the
19 date when you had told him the acreage and the well that you
20 were letting Judge Nixon invest in?

21 A. I don't remember him telling me that.

22 Q. Well, how do you get to backdating it? Didn't Carroll,
23 wasn't he the one that told you to?

24 A. Yeah.

25 Q. Well, I take it if Carroll, who you rely on, says it should

1 be dated back, you recall him giving you a reason for doing it?

2 A. I remember him saying something about the Judge had to make
3 a disclosure, but I don't remember him --

4 Q. Mr. Fairchild, let me just ask you this: You recall at-
5 some time -- You have talked to Carroll on many occasions
6 before and after this. Right?

7 A. Yes.

8 Q. You have a recollection at some time his mentioning the
9 judges have a disclosure form that they need to fill out each
10 year. Correct?

11 A. Yeah.

12 Q. You're saying that perhaps that is said as the reason for
13 backdating it, because then you would expect that if it was
14 dated back to 1980, it would be on the disclosure report for
15 that year. Right?

16 A. Yeah.

17 Q. Okay. That's what would make sense. Okay?

18 A. Yeah.

19 Q. Do you recall, what I'm suggesting to you, first I'm
20 suggesting to you, it wasn't on the 1980 disclosure report of
21 Judge Nixon. Okay?

22 MR. WEINGARTEN: I'm going to object to that. That's
23 introducing evidence through counsel.

24 MR. FAWER: Do you want me to show him the document?

25 MR. WEINGARTEN: How would he know?

1 MR. FAWER: I can use anything to refresh his
2 recollection.

3 MR. WEINGARTEN: All right. Show him that.

4 MR. FAWER: Can we have something less than a debate
5 between us? I suggest, Your Honor, I have a right to put a
6 proposition to the witness, the witness can accept it or reject
7 it, or, as you have directed to the jury, what I say is not
8 evidence but I have a right to ask questions, suggest facts and
9 the witness can reject it, accept it and move on from there.

10 THE COURT: How would he know anything about the
11 Judge's form anyhow?

12 MR. FAWER: He told us, he said Carroll had mentioned
13 it.

14 THE COURT: I understand what he said.

15 MR. FAWER: I will go on from there, I'll move on.

16 BY MR. FAWER:

17 Q. You have never seen any such disclosure report. Correct?

18 A. No.

19 Q. You had occasion to talk to Mr. Jarvis once when he was
20 taping you in 1984. Right?

21 A. Yeah.

22 Q. And do you recall this question came up, you remember that?

23 A. Yeah.

24 Q. And you recall telling Mr. Jarvis that it was backdated
25 simply to, for the date on which the deal had been made. Did

1 you tell that to Jarvis?

2 A. Yes.

3 Q. Okay. And that is what you and Carroll had discussed, that
4 the date should be the date on which you had chosen the
5 acreage, chosen the wells and set the price. Correct?

6 A. Repeat that.

7 Q. You told Jarvis that the backdating, you told us this is
8 so, you told Jarvis that the backdating was simply to put it to
9 a date when you really had made the deal with Carroll for Judge
10 Nixon. Okay?

11 A. Yeah, I told Carroll that.

12 Q. Okay. Well, you told Jarvis that?

13 A. I meant Jarvis.

14 Q. No problem. That date, that earlier date was the day that
15 you had told Carroll the names of the well, Marion, Covington
16 are the locations, Marion, Covington and Mobile, the amount of
17 acreage, three, five and three and you and he had set the
18 price, so it was for that reason that you set, that you had it,
19 that he, Carroll, wanted it backdated to that date. Correct?

20 A. I don't remember Carroll saying that's the reason he wanted
21 it back dated.

22 Q. Do you recall telling it to Jarvis?

23 A. Yeah, when he was out there at the time, yeah.

24 Q. And do you recall telling Jarvis that the price that you
25 set for Judge Nixon to pay was the fair price for when the deal

1 was made, when the verbal deal was made, that 95 hundred was a
2 fair price? Do you remember telling him that?

3 A. Yes.

4 Q. And that you said to him, like it's happened so many times,
5 a deal is made way before the papers is drawn up. Do you
6 remember telling him that?

7 A. Yeah.

8 Q. That's just what happened here. Right?

9 A. Apparently that's right.

10 Q. Okay. And then the only question was for you to tell
11 Jarvis, after you had your conversation with Carroll, as to
12 what date to put on the document. Correct?

13 A. I don't recall telling Jarvis what date to put on the
14 documents.

15 Q. Well, we know Carroll is not there, we know you're in the
16 office. Correct? Am I right?

17 A. Yeah.

18 Q. We know that Jarvis prepared the documents. Okay?

19 A. Yeah.

20 Q. So there's only two possibilities, either Jarvis has to get
21 his instructions from you or he has to talk to Carroll after
22 Carroll has spoken to you. Correct?

23 A. He would have had to got it from me or Carroll, yeah.

24 Q. So between the two of you, he got the date and put down on
25 the new deeds February 25, 1980, to reflect the date the deal

1 was made. Correct?

2 A. Like I say, I don't remember Carroll's telling me that's
3 why he wanted them back dated.

4 Q. Listen to my question.

5 A. Okay.

6 Q. The date that Carroll -- Excuse me, the date that Jarvis
7 puts down, February 25, 1980, is the date that he gets from
8 either you or Carroll as the date when the actual deal was
9 made, when the verbal deal was made.

10 A. Well, he got that date from either me or Carroll, one.

11 Q. Okay. And he prepares what is then these three documents,
12 and he brings them to you. Correct?

13 A. Yeah.

14 Q. And you saw those, I mean you've seen the forms before.
15 Correct?

16 A. Yeah.

17 Q. And you looked them over and you signed them, you put your
18 name on all three. Right?

19 A. Yeah.

20 Q. There is only two differences, actually three differences
21 at this point?

22 MR. FAWER: Would you indulge me one minute, Your
23 Honor, please?

24 (Pause.)

25 BY MR. FAWER:

1 Q. You signed the document, you dated it? You see that there
2 are just two changes, the number is -- Now you have five acres
3 on the Covington deed, three on each of the others, and the
4 date is now February 25, 1980, and you signed the documents.
5 Correct?

6 A. Yeah.

7 Q. And you signed them, they're notarized, and that's the last
8 you see of them. Is that correct?

9 A. Yes.

10 Q. You don't think anymore about it. Right?

11 A. No.

12 Q. And what you expect at that time is the documents are going
13 to be recorded in the county courthouses in each of those
14 counties. Right?

15 A. Yeah.

16 Q. And as far as you know, they were recorded. Am I right?

17 A. Yes.

18 Q. And when they are recorded, they have the name of the person
19 who is the assignee, Walter L. Nixon, Jr. Correct?

20 A. Yes.

21 Q. That's the name of Judge Nixon, the full name of Judge Nixon.
22 Right?

23 A. Yes.

24 Q. You've gone to county records -- Anybody can go to see deeds
25 and conveyances and assignments. Right?

1 A. Yes.

2 Q. Did you ever tell anybody, don't record this deed?

3 A. No.

4 Q. Just the opposite, you wanted it to be recorded?

5 A. Yes.

6 Q. Did you ever tell anybody don't prepare division orders with
7 Judge Nixon's name on them?

8 A. No.

9 Q. You know those were being prepared. Correct?

10 A. Yes.

11 MR. FAWER: Judge, would this be a good time --

12 THE COURT: We're going to recess when you get through
13 with this witness.

14 MR. FAWER: Somebody is going to be awfully hungry.

15 THE COURT: Well, that's too bad.

16 MR. FAWER: Can we approach the bench, Judge?

17 (AT THE BENCH:)

18 MR. FAWER: We have a Judge who is supposed to be on
19 trial for his life. I have only moved to February 25, 1981.
20 We haven't touched this case. We're still on this -- I assume
21 you are kidding.

22 THE COURT: Well, you want to recess?

23 MR. FAWER: I'll go for another hour if you want to
24 have lunch at one. It doesn't make any difference to me. You
25 have a 74-year-old man on the stand.

1 THE COURT: All right. We'll recess until 1:15.

2 (Recess.)

3 (End of Volume 5.)

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF MISSISSIPPI
3 HATTIESBURG DIVISION

4 UNITED STATES OF AMERICA

5
6 V. CRIMINAL ACTION NO. HB5-00012(L)

7
8 WALTER L. NIXON, JR.

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10
11 BEFORE: The Honorable James Meredith
12 Senior United States District Judge

13 DATE: January 30, 1986

14 PLACE: Hattiesburg, Mississippi

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17 VOLUME 5
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1 THE COURT: Proceed.

2 MR. FAWER: Thank you.

3 BY MR. FAWER:

4 Q. Mr. Fairchild, we we've worked through the events of
5 February 25th, and let's just proceed from there. As I
6 understand it, the oil wells didn't start producing -- from
7 what we can see from the checks, at least royalty checks
8 weren't received until the early part of 1982? Remember you
9 read off the dates on the checks?

10 A. Yes.

11 Q. Is it fair to say, by the way, when you look at those
12 various checks, the early checks are often larger than the
13 later ones. Is that not because often the money, there will be
14 several months of production, and they'll be caught up in one
15 check to pick up let's say four months of production?

16 A. Yes.

17 Q. That's not unusual, right?

18 A. No.

19 Q. In any event, it's your recollection, you hadn't met Judge
20 Nixon at all before this transaction. Sometime after the deeds
21 were recorded, in fact as you recall it after the wells, after
22 some money was received in royalty payment, that you met him,
23 is that right?

24 A. Yes.

25 Q. Are you sure that it wasn't a little earlier than that, do

1 you have a pretty firm recollection? What is it based on?

2 A. Just my recollection.

3 Q. Okay. Is it fair to say, do you recall asking Carroll
4 Ingram, telling Carroll you would like to meet the judge, and
5 his saying fine, next time he's in Hattiesburg, I'll bring you
6 together?

7 A. Did I ask Carroll that I'd like to meet the judge?

8 Q. That's what I'm asking?

9 A. I don't specifically remember that, but I very well could
10 have said that, just in a conversation.

11 Q. In any event -- I'm sorry?

12 A. You know, just in conversation.

13 Q. And you had not met him. I take it Carroll brought him
14 over to the office one day?

15 A. Right.

16 Q. You have a private office at the company, right?

17 A. Yes.

18 Q. The three of you sat down, had some coffee and chatted a
19 bit?

20 A. What now?

21 Q. The three of you sat down and talked a little bit, correct?

22 A. Well, one time we did, but one time we didn't.

23 Q. I want to understand --

24 A. The first time, yeah.

25 Q. Just stay with me, we're not, we well come to the next one.

1 On this occasion, you sat, Carroll brings him over, and you've
2 never met this man in your life, he introduces you to this
3 gentleman here, right?

4 A. Yes.

5 Q. You shake hands, send out for some coffee or something, is
6 that right?

7 A. Yes.

8 Q. And you chat a little bit, correct?

9 A. Yes.

10 Q. He tells you, does he tell you about his family and the
11 reason that he appreciates you putting him into an investment?

12 A. He could have said it, but --

13 Q. Do you recall telling him anything about your life when you
14 were younger?

15 A. No, I don't, but I very well could have.

16 Q. You have a rather vague recollection, you know the meeting
17 occurred, it was really small talk that was taking place, is
18 that right?

19 A. Yeah.

20 Q. Do you remember any discussion where there was some talk
21 about, that the oil and gas business is a gamble, it's a very
22 risky business?

23 A. Yes.

24 Q. You do remember that?

25 A. Yeah.

1 Q. Okay. And at some point, was Carroll present all the time
2 or was he doing some business, going out of the room, taking
3 care of other things he had to do with your staff?

4 A. I don't remember.

5 Q. Okay. I take it, how long was this first time you met one
6 another, ten minutes, fifteen minutes, how long? Half an hour?

7 A. It was closer to, best I can remember, twenty or thirty
8 minutes.

9 Q. Okay. At some point he either had to leave because he had
10 another appointment or you had something to do, but the meeting
11 comes to an end, right?

12 A. Yeah.

13 Q. Before it does, he thanks you for putting him in the
14 investment, right?

15 A. Yes.

16 Q. And he tells you what? Tell the jury again what he said to
17 you right there, shook your hand?

18 A. He says I appreciate this.

19 Q. Go ahead?

20 A. I need this, and if I can ever help you, I'll help you, if
21 I can't I'll just tell you I can't.

22 Q. Fine. You understand exactly what he was telling you,
23 right?

24 A. Yes.

25 Q. The two of you left on -- let me ask you something. Do you

1 recall in that same conversation telling him that you'd like
2 him to keep in touch, to drop in on you if he was in town or
3 give you a call once in a while?

4 A. That would have been -- that would be like me to have said
5 that to him.

6 Q. Okay. Over the next months or next year, 1982, do you
7 recall an occasion he called you just to see how you were, talk
8 to you about the wells, what's going on?

9 A. Yes.

10 Q. On the phone, am I right?

11 A. Yes.

12 Q. He called you, chat for five minutes, and that would be it,
13 correct?

14 A. Yes.

15 Q. Remember him ever stopping by alone, come to your office
16 because he was in town or passing through, have a cup of coffee
17 with you?

18 A. Yes, he done that.

19 Q. Okay. You liked the idea he would stop by, correct?

20 A. Well, yeah, I was glad to see him.

21 Q. Glad to see him. He found you friendly, you found him
22 friendly, correct?

23 A. Yes.

24 Q. Okay. And as I recall, correct me if I'm wrong, in late
25 October did you learn that in that fall, 1982, October of 1982,

1 okay? There is a place here in town called Bonnie and Clyde's,
2 right?

3 A. Yes.

4 Q. And the judge had just been made the chief judge of the
5 Southern District of Mississippi, do you remember that?

6 A. Yes.

7 Q. And there was a party thrown in his honor, right, a
8 cocktail party?

9 A. Yes.

10 Q. And you were invited to attend?

11 A. Yes.

12 Q. Your brother was there?

13 A. Yes.

14 Q. Carroll Ingram was there?

15 A. Yes.

16 Q. George Phillips was there?

17 A. Yes.

18 Q. A lot of lawyers were there, other people from the town
19 were there, correct?

20 A. Yes.

21 Q. Just a nice time, everybody was very happy about the judge
22 being made chief judge?

23 A. Yes.

24 Q. Of course the judge was there?

25 A. Correct.

1 Q. You had never met his wife before that night, right?

2 A. No.

3 Q. You did meet her that night?

4 A. Yes.

5 Q. She is here, seated right here, correct? You see Barbara?

6 A. Yes.

7 Q. Do you remember meeting her that night?

8 A. Yes.

9 Q. Okay. The judge introduced you to her?

10 A. Yes.

11 Q. Okay. And do you remember in the course of your
12 conversation that night that you mentioned to him that you
13 might have another investment that he might be interested in,
14 do you recall telling him that that night?

15 A. I don't remember telling, I remember telling him or her
16 one, yeah.

17 Q. Her or him that night, maybe both of them?

18 A. Yeah.

19 Q. By the way, there were -- you didn't take them off into a
20 corner or anything, this was done with other people standing
21 around, everybody having a drink in their hand, right?

22 A. Right.

23 Q. Okay. I want to stop for a minute, okay? You stayed for a
24 while at that party, assume you left with your brother and that
25 was it, right? You stayed for a period of time and left?

1 A. Yeah.

2 Q. I want to go back now. Let's go back to 1980. In 1980,
3 out of the blue, you learn that your son might have been
4 involved in something involving marijuana at the airport,
5 right?

6 A. Yes.

7 Q. Okay. Now I understand that whole incident was not
8 something that was very pleasant to you, correct?

9 A. That's right.

10 Q. But I must ask you some questions about it, so you bear
11 with me?

12 A. Yes.

13 Q. You and your son at the time were not really on speaking
14 terms, right?

15 A. Not really, no.

16 Q. Well, as a practical matter, he used to, he and Bob Royals
17 used to have their office at the construction company's office
18 building, right?

19 A. Yeah, they worked out of there.

20 Q. Okay. They had a company called F and R, right?

21 A. Yes.

22 Q. You for some reason back in 1979 asked them to leave?

23 A. Yes.

24 Q. And from that point forward when they left back in 79, you
25 and your son were not talking, correct?

1 A. Well, our paths just didn't cross.

2 Q. Your paths didn't cross, but you were father and son, so if
3 you wanted to, you could have had your paths cross; you chose
4 not to?

5 A. That's right.

6 Q. And so that the rest of 79 and all of the year 1980 you and
7 he are not on speaking terms, right?

8 A. That's right.

9 Q. Okay. There is an arrest -- excuse me, a drug raid, drug
10 arrest that you read about that takes place at the Hattiesburg
11 airport on August 4, 1980, okay?

12 A. Yes.

13 Q. Take my word, that's the day. Your son was not arrested at
14 the airport, in fact he wasn't arrested at all, correct?

15 A. Yes.

16 Q. You read about it, you knew he had his office out at the
17 airport, right?

18 A. Yes.

19 Q. At some point, you learn, don't you, that there is, that he
20 may be involved with, there is some problem he has, correct?

21 A. Yes.

22 Q. How did you learn that?

23 A. I don't remember the details of how I learned it.

24 Q. Let's see if we can focus in on a period of time, see if we
25 can come to some conclusions. He goes to see, you testified,

1 you knew he had gone with Bill Porter to see George Phillips in
2 Jackson, right?

3 A. Yes.

4 Q. Did you know that he was possibly in trouble before they
5 went to Jackson?

6 A. Yes.

7 Q. Okay. They went to Jackson in November of 1980, so how
8 long before that did you learn that he might have been in
9 trouble?

10 A. How long before he went up there?

11 Q. Yeah.

12 A. I don't remember.

13 Q. Okay.

14 A. Some time, you know.

15 Q. Did he come and tell you he was in trouble, did Porter
16 mention it, did anybody else?

17 A. I just don't remember who told me.

18 Q. Did you know anything about he and Porter going to see Bud
19 Holmes before they went to Jackson?

20 A. No, I heard about it later.

21 Q. Okay. I just want to know what you knew --

22 A. Okay. Okay.

23 Q. That's fine. I take it there are some things in this whole
24 matter that you learned after the fact, right?

25 A. Yeah.

1 Q. I'm trying to just deal with what you knew at the time they
2 occurred, all right?

3 A. Yeah.

4 Q. Okay. In any event, you didn't know that they had seen, or
5 you knew nothing about them talking to Bud Holmes, but you knew
6 at some point before they go to Jackson that your son might be
7 in some trouble?

8 A. Yeah.

9 Q. He didn't come and tell you this, and you didn't talk to
10 him about it, correct?

11 A. (Nods yes.).

12 Q. There was no publicity because his name hasn't, the
13 Fairchild name is not in the newspapers at all at this point,
14 correct?

15 A. That's the best I remember, yeah.
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1 Q. Okay. How do you learn that they do enter into an
2 agreement up in Jackson with George Phillips?

3 A. Best I remember, my son come back and told me.

4 Q. Okay. If you're not on speaking terms, how did he? -- Why
5 did he call you? What do you recall about that? If he told
6 you that it means he's admitting he's involved in something?

7 A. Well, I just don't remember them details. I found out that
8 he made a deal with George Phillips and I was relieved that
9 that would be the end of it.

10 Q. Good. From what I understand, your son tells you he made a
11 deal with George Phillips. Correct?

12 A. Yeah.

13 Q. You knew George and as far as you knew he was an honorable
14 man, so as far as you were concerned, it was a deal and it was
15 all over with?

16 A. Right.

17 Q. One of the things I take it, you were not only happy your
18 son was not going to have to go to jail, --

19 A. Yes.

20 Q. That would upset you?

21 A. Yeah.

22 Q. -- but also there would be no publicity as far as you could
23 see?

24 A. Yeah.

25 Q. And there hadn't been. For now it was a dead issue. He

1 made his deal, he was out of whatever trouble he had, he was
2 out of that trouble. Right?

3 A. I thought he was.

4 Q. Okay. And that deal was made in the latter part of
5 November of 1980. Okay? We have it here, we have the
6 document. No question.

7 A. I saw the letter.

8 Q. Okay. Who showed it to you?

9 A. Drew brought it to me and I got a carbon copy of it.

10 MR. FAWER: Okay. Could I have a copy of the
11 memorandum of understanding, the first one, the Government's
12 Exhibit Number 1? There we go. Sorry, it's number two.

13 BY MR. FAWER:

14 Q. We don't need you to reread it, this is the document, I
15 take it you read it over at the time, and it had Porter's and
16 Phillips' and your son's signature on it. Right?

17 A. Yeah. Yeah that's --

18 Q. The signatures are on the third page, in case you need to
19 see it.

20 A. Yeah, that's it.

21 Q. It's dated November 19 and it's all over and done with at
22 that point. Correct?

23 A. Well, I thought it was.

24 Q. Okay. December goes by, January goes by, January of 19 --
25 We are now into 1981. February goes by, 1981. March goes by,

1 April goes by, May goes by, June goes by, everything's fine,
2 there's nothing going on with your son. Right? You're not
3 seeing him but there's nothing going on. Right?

4 A. Right.

5 Q. You're not concerned about it in the least?

6 A. No.

7 Q. There's no publicity?

8 A. Right.

9 Q. One thing that does come about, it doesn't affect your son
10 being in trouble as such but Bill Porter, you learned, has
11 filed suit against your son. Right?

12 A. Yes.

13 Q. And he's suing him for \$10,000, a legal fee. Right?

14 A. Yes.

15 Q. And you read about it in the paper or your son told you or
16 Bill Porter told you or who told you?

17 A. I think I read about it in the paper.

18 Q. It bothered you because you just didn't like seeing it in
19 the paper?

20 A. No, I didn't like it.

21 Q. It was simply the name Fairchild held up in a bad light.

22 A. Right.

23 A. Yeah.

24 Q. It didn't involve your son being in trouble but your son
25 owed Porter some money or at least that's what Porter claimed?

1 A. Yes.

2 Q. Did you then talk to Porter about his bill?

3 A. I talked to Drew and asked him how much time Porter spent
4 and talked to Bob Royals and they told me how much time he
5 spent and I asked, I asked maybe Bob Royals to talk to Bill
6 Porter and see would he settle for 25 hundred dollars.

7 Q. Okay. And I take it 25 hundred -- Is that Drew told you he
8 had done, about 25 hours of work?

9 A. Yeah.

10 Q. And you figured a hundred dollars an hour?

11 A. Yeah.

12 Q. Plus there was some out of pocket expenses. Right?

13 A. Yeah, a little bit.

14 Q. Did you write a check for that amount?

15 A. Yes.

16 Q. Okay. Did Porter tell you he will take that amount or you
17 just decided that's what you would send him?

18 A. I think he sent a bill for that.

19 Q. Do you have a copy of it?

20 A. No.

21 Q. Okay. But he agreed to that amount?

22 A. Yeah, he'd take that amount and cashed the check.

23 Q. We have the check and we have introduced it, it's for 26
24 hundred, 26 69, I think. Right?

25 A. Yeah.

1 Q. You paid that in July, early July 1981. Okay?

2 A. Yeah.

3 Q. All right. Is it fair to say that you actually, -- Well,
4 let me phrase it this way: Are you sure that he had sent you a
5 bill for that amount because the suit was for \$10,000, wasn't
6 it?

7 A. Yes.

8 Q. So you sent him a check for 25 hundred. Right?

9 A. Yeah.

10 Q. And he wanted the rest of it, didn't he?

11 A. I think that was later on, when he was indicted in state
12 court.

13 Q. Okay. But you remember there was some conversation where
14 you were being pressed for some more money from Bill Porter.
15 Correct?

16 A. Yeah.

17 Q. And Royals talked to you about that?

18 A. Yes.

19 Q. After coming back from Maxwell?

20 A. Yes.

21 Q. Am I right?

22 A. (No response.)

23 Q. Think about it.

24 A. Drew said he needed to get up 75 hundred dollars and I
25 said, well, they had this F&R oil company and I said you get it.

1 all up and get a good price on it and I'll buy it. And that's
2 where he got part, -- and that money went to pay Bill Porter

3 Q. Let me just understand something. Wasn't there at any time
4 any suggestion made to you that if you didn't pay Bill Porter--
5 the balance of the fee, that Drew might get indicted in state
6 court?

7 A. No, I don't remember nothing about that.

8 Q. Okay. Did Drew ever mention that to you?

9 A. No.

10 Q. Okay. What you --

11 A. I don't remember him mentioning that to me.

12 Q. Okay. Fine. You recall, though, that you ended up paying
13 75 hundred dollars to Bill Porter. Right?

14 A. Yes.

15 Q. And what is it, yesterday when you were testifying, you
16 indicated that something about making Drew mortgage his house
17 or something?

18 A. No, I told him to sell everything that he could sell,
19 except his house.

20 Q. Except his house?

21 A. Except it.

22 Q. Well, as a practical matter, what you asked him to do in
23 order to pay his bill, this 75 hundred to Porter for
24 representing him on the state case, he had just been indicted
25 by the state. Right?

- 1 A. Yeah.
- 2 Q. And there's a lot of publicity at that point?
- 3 A. Yes.
- 4 Q. You were upset about it?
- 5 A. Yes.
- 6 Q. This is the first publicity there is since day one. Right?
- 7 A. Yes.
- 8 Q. And what you told him to do is that you would give him the
- 9 75 hundred, if he assigned over to you a whole bunch of oil
- 10 royalties that he had?
- 11 A. Yes.
- 12 Q. Am I correct?
- 13 A. Yes.
- 14 Q. And let me just show you document, it was not only he who
- 15 had assigned them over to you, but they were owned by --
- 16 A. F&R.
- 17 Q. Drew and Royals. Right?
- 18 A. Yeah.
- 19 Q. Royals had not been indicted. Right?
- 20 A. No.
- 21 Q. So he assigned the two of them, assigned over to you on
- 22 September 4, I count some 30, oh, I don't know, interests in 30
- 23 different mineral leases and about six other interests, as
- 24 well. Correct?
- 25 A. Yeah, that's it.

1 Q. In other words, you had him sell to you or give to you in
2 exchange for that money, all of these interests, he and Royals.

3 Correct?

4 A. Yes.

5 Q. All right. And how much money did you give him? Did you
6 give him some money beyond the 75 hundred or just 75 hundred?

7 A. I don't remember. I know that Bill Porter got 75 hundred
8 dollars. But I could have paid him more. I don't remember.

9 Q. Okay. And how do you date this, you indicate that there's
10 some other event, there was a visit from Royals right after he
11 goes to Maxwell. Okay?

12 A. Yes, sir.

13 Q. Now so the jury understands, there was a man named Joe
14 Krohn who was a friend of Porter and Royals. Right?

15 A. Yes.

16 Q. His name was Joe Krohn?

17 A. Yes.

18 Q. And he was in prison at Maxwell Air Force Base?

19 A. Yes.

20 Q. Right?

21 A. Yes.

22 Q. And what you recall is a visit from Royals, apparently the
23 Monday or the day after coming back from a visit to Joe Krohn?

24 A. Yes.

25 Q. Okay?

- 1 A. Yes.
- 2 Q. How do you date that or can't you date it at all?
- 3 A. I don't, I don't -- I just don't try to keep up with dates,
4 period.
- 5 Q. I understand that.
- 6 A. But he said that they had been to see Joe Krohn, I don't
7 know whether they had or not, but he said they had, Bob Royals
8 had.
- 9 Q. Do you follow football at all?
- 10 A. A little bit, yeah.
- 11 Q. Alabama-Mississippi game?
- 12 A. Yes.
- 13 Q. Do you remember talking with Royals about the game that had
14 just been played that previous Saturday?
- 15 A. No.
- 16 Q. Okay. You don't really recall when this visit from Royals
17 was to you, can you?
- 18 A. I can't recall a date.
- 19 Q. You can't recall the year?
- 20 A. No, I'm not positive which year it was. It could have --
- 21 Q. Joe Krohn, let me help you. Joe Krohn entered Maxwell in
22 January of 1981. Could have been in 81. Right?
- 23 A. I don't think it could have possibly been in 81 because Bob
24 Royals had been over there to see him a few times before this
25 occasion.

1 Q. About how many times?

2 A. Oh, a couple of times that I would think.

3 Q. How would you know that?

4 A. Well, he --

5 Q. Bob told you?

6 A. He would tell it as I'd run into him, he'd say it.

7 Q. Bob Royals in 1981, before August of 1981, had been to see
8 Joe three times already. Okay?

9 A. (Nods yes.)

10 Q. Sound about right?

11 A. Well, yeah. Yeah.

12 Q. He saw him in August of 1981 and he saw him again in
13 September, September 13 of 1981. Okay?

14 A. (Nods yes.) Yeah.

15 Q. So that could have been, I take it, as far as you know,
16 he'd already seen Krohn a few times, it could have been that
17 August or September visit, right after that that he comes to
18 talk to you and has the conversation that you described
19 yesterday. Right?

20 A. Well, it was after one visit he had over there.

21 Q. Okay. I'm just trying to help you try to figure out when
22 it was.

23 A. Well, anything that -- I just don't try to keep them in my
24 head.

25 Q. I realize that. All I can do, since I wasn't there, is try

1 to take the events that you say occurred around it, and help
2 you if I can. If not we'll just go on from there. Okay?

3 A. (Nods yes.)

4 Q. But we do know that he visited Joe Krohn several times in
5 1981 and then visited him again on Sunday, August 2, and
6 Sunday, September 13 of 1981. So I take it his visit that he
7 described to you could have been the day after that?

8 A. It was the day -- It was on a Monday after he had visited
9 on a Sunday.

10 Q. Okay. I take it the only other person who would know this
11 would be Bob Royals, who could help us on that?

12 A. Yeah.

13 Q. Nobody else was there for this visit that you described?

14 A. No.

15 Q. Okay. And it was a visit in which -- What did he say to
16 you? What is it that Porter wanted more money?

17 A. He, you want me to repeat what I said yesterday.

18 Q. I want you to tell me what you recall of that conversation.
19 Let me ask you a question before I come to that. Have you
20 memorized certain conversations? Have you tried to memorize
21 certain conversations?

22 A. Some that I think are very important that I remember as --

23 Q. Who has told you that they are important?

24 A. Well, I knew they was important. Nobody has told me that.

25 Q. When you say this conversation with Royals was important

1 because, to you, because it stuck out, it angered you. Right?

2 A. Yeah, because I was angry with him because I think he was
3 trying to blackmail me.

4 Q. Okay. Tell us again what you said. I know what your
5 answer was, it wasn't no, it was hell, no. What did he say?

6 A. He said -- He and Bill Porter went over to see Joe Krohn
7 and on the way back, Bill Porter says that if Drew would get up
8 off his money he'd come clean with this. And Bob Royals says,
9 well, Drew don't have no money. He says, well, his old man
10 does. He says, yeah, but that's not his money, it's the old
11 man's. And he said, well, if his old man knew he was going to
12 get his tail in the crack -- that wasn't the exact words but --

13 Q. Excuse me. Going to get his tail in a crack?

14 A. If the old man knew he was going to get his tail in the
15 crack, he would get up off his money.

16 Q. Okay. Now in August of 1981, Drew was indicted in the
17 state court. Correct? August 26.

18 A. Well, yeah, if that's the way it was.

19 Q. No question that's the date.

20 A. Okay.

21 Q. After that he had already gotten his tail in the crack.
22 Right? Got indicted. Correct?

23 A. (No response.)

24 Q. Do you understand my question?

25 A. Yeah, he got indicted in state court.

1 Q. Listen to what I'm asking you. Bob Royals is telling you
2 at this visit that if you don't get up off your money, your son
3 could get his tail in a crack. Right?

4 A. Yes.

5 Q. He had not, he had not been indicted in federal court, as
6 far as you knew that problem was all over with. Right?

7 A. Yeah.

8 Q. Okay. Porter, before the indictment in August of 81, was
9 still complaining that he had not been paid the 75 hundred
10 dollars. Right?

11 A. Not to me.

12 Q. Well, you knew, but you knew he had sued Drew for ten
13 thousand?

14 A. Yes.

15 Q. You tried to get him to take 25 hundred. Right?

16 A. Yep.

17 Q. 25 hundred is not ten thousand. Right?

18 A. That's right.

19 Q. And he was passing a message along wasn't he, that unless
20 that 75 hundred was paid, your son is going to get his tail in
21 a crack?

22 A. He didn't mention 75 hundred.

23 Q. He meaning Royals?

24 A. Yeah. Royals didn't mention 75.

25 Q. I understand that. He's telling you, though, if you don't

1 get up off your money, your son will get his tail in a crack.

2 Am I right?

3 A. Yeah.

4 Q. Now when the 75 hundred is paid -- your son is indicted on
5 August 26. Correct?

6 A. Yeah.

7 Q. You do pay Porter 75 hundred on September 3, 1981. Am I
8 correct?

9 A. Yeah.

10 Q. And as far as you knew and Drew knew, this 75 hundred was
11 going to take care of the problem in the state court. Correct?

12 A. Yes.

13 Q. Okay. So the conversation with Royals is in all likelihood
14 took place just before the state case and the events that
15 happened shortly after that visit is the indictment of your son
16 and the payment by you of the 75 hundred dollars to Porter.
17 Correct?

18 A. The best I remember when he was out there he had already
19 been indicted in state court.

20 Q. Tell me what makes you think that. Let me ask you another
21 way. I know that's what your best recollection is, at least
22 you're saying that --

23 A. Well, that --

24 Q. -- the 75 hundred to Porter, as far as you know, was to
take care of the state case. Right?

1 A. Yes.

2 Q. Okay. In January of 82, let's just jump five months later,
3 he's indicted in August, pleads got guilty in September with
4 Bill Porter who got 75 hundred that day, and by January 12 of
5 1982, your son with Bill Porter has made a deal with Bud
6 Holmes. Right?

7 A. Yes.

8 Q. That he will get no jail time, probation and a \$5,000 fine.

9 A. Yes.

10 Q. Right?

11 A. Yes.

12 Q. As far as you knew there was not going to be any problem
13 then, even on the state level?

14 A. Right.

15 Q. What is it that you're thinking in your mind that could
16 have still been a problem on the state level after the deal was
17 already made?

18 A. There's no question in my mind, when Bob Royals come out
19 there, it was, he was trying to blackmail me.

20 Q. I hear that. It sounds like it was. But it sounds to me
21 like he was trying to get from you an amount of money for his
22 friend Porter. Porter was his good friend, wasn't he?

23 A. Yes.

24 Q. You didn't think, I mean you now know or you knew at the
25 time I guess that Royals may have in fact been involved with

1 your son in the trouble at the airport. Right?

2 A. Yes.

3 Q. If your son -- There's a story about the son, Royals, who
4 has not been indicted, could get into trouble too. Correct?

5 A. Yes.

6 Q. He's talking to you about, you know, getting off your money
7 to take care of Porter so there's nothing, nothing more
8 happens. Isn't that what he's telling to you? It sounds like
9 blackmail.

10 A. If he had a told me that you better get Bob Royals -- You
11 better get Bill Porter's other, the rest of that \$10,000, well,
12 I would have remembered it.

13 Q. He didn't necessarily say that to you? He may not have
14 known what the numbers were.

15 MR. WEINGARTEN: Your Honor, I'll object to the line
16 of questioning.

17 MR. FAWER: I will rephrase the question.

18 BY MR. FAWER:

19 Q. You're saying if he said that to you, it wouldn't have
20 bothered you as much?

21

22

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24

25

1 A. Well, the best of my recollection that the seventy-five
2 hundred dollars had already been paid when I, when he come out
3 there.

4 Q. Can you tell the jury, though, when he says your son is
5 going to get his tail in a crack, how can it be after he's
6 already been indicted in the state court, has already made his
7 deal with Bud Holmes?

8 MR. WEINGARTEN: I object, asked and answered about
9 three times, Your Honor.

10 MR. FAWER: I've never asked the question.

11 MR. WEINGARTEN: In the same form.

12 THE COURT: Sustain the objection, it's repetitious.

13 BY MR. FAWER:

14 Q. Do you know of any additional problem that your son got
15 into other than being indicted in the state court?

16 A. No.

17 Q. Okay. And that was in August and he pleads and cuts his
18 deal with Bud January of 82, right?

19 A. Yes.

20 Q. Okay. Now, you had, there was some publicity as we
21 indicated. The first publicity was in August when he was
22 indicted and that made you upset?

23 A. Yes.

24 Q. And then when he pled, brought into court and he was
25 arraigned, that upset you a bit, right?

1 A. Correct.

2 Q. Then in January when he entered his plea of guilty,
3 remember when he had two minutes to plead?

4 A. Right.

5 Q. It upset you he had two minutes but there was also
6 publicity and the name Fairchild spread on the paper again,
7 right?

8 A. Yeah.

9 Q. Then really for a year the publicity disappears, your son
10 is in the hospital in Oschner for a period of time, right?

11 A. Yes.

12 Q. And Watkins -- by the way, you knew there was another
13 person that was indicted with him, right?

14 A. Yes.

15 Q. That was Watkins?

16 A. Yes.

17 Q. That was the pilot?

18 A. Yes.

19 Q. Okay. He was a fugitive, right?

20 A. Yes.

21 Q. And they were waiting for Watkins to be found and brought
22 back to trial before they sentenced your son, right?

23 A. That's what I understand, yes.

24 Q. But for a long period of time, there was no publicity
25 because there were just continuances going down the road,

1 right?

2 A. Yes.

3 Q. Your son got continuances for back operations, for
4 recuperating and to get Watkins back here, right?

5 A. Yeah.

6 Q. Okay. By the way, he pled in January of 1982, some
7 publicity at that time as you've told us. In February and
8 March he's in the hospital in Oschner, did you go over to see
9 him when he had the back operation at all?

10 A. No.

11 Q. It was over in New Orleans, right?

12 A. Yes.

13 Q. In March he's in the hospital recovering, there is no
14 problem with the publicity, and no problem with the state,
15 correct?

16 A. Yes.

17 Q. Same thing in April and May, from what Drew tells us he was
18 recuperating for about six months from that serious back
19 operation, right?

20 A. Yes.

21 Q. Did you ever see him at all during that period while he was
22 recuperating?

23 A. I think I did, but I don't recall whether it was at the
24 office or anywhere.

25 Q. There was no problem with his state case all that period of

1 time, right?

2 A. No, that's right.

3 Q. All right. The first time, the next thing that you recall
4 happening, if I'm not mistaken, with his case, is Carroll
5 brings to you a document passing the case to the file, right?
6 Right around Christmas of 1982?

7 A. Yeah.

8 Q. Correct?

9 A. He brought me the document, yeah.

10 Q. And you were still on good terms with Carroll or were you
11 having a problem with him then?

12 A. I was still on good terms.

13 Q. Okay. And he brings, there was a document that said --
14 what's the number. This is the document he brought to you,
15 didn't he, said Merry Christmas, brought you a document signed
16 by Jack Weldy just before he left office, right?

17 A. Yes.

18 Q. You looked at it and you were pleased, right?

19 A. Yes.

20 Q. And you hadn't seen any publicity on this thing in a long,
21 long while, right?

22 A. Yes.

23 Q. Am I correct?

24 A. I don't recall there being any.

25 Q. Let's think about it a minute. He pled back in January,

1 cut his deal, right? January of 82. This is now December of
2 82, he was in the hospital recuperating, looking around for the
3 fugitive, there is no publicity for a whole year, things are
4 real quiet, right?

5 A. Well I don't know whether there was any publicity or not.
6 I don't think it wasn't a year here without some publicity.

7 Q. Can you tell us of anything that would have generated some
8 publicity, until this happened?

9 A. Well, I know Marvin Rubin down at Viewpoint on the radio
10 station to the effect that something was, wasn't right because
11 that, I don't remember when that was, and that upset me.

12 Q. Just saw it. Marvin Rubin got on radio and complained, why
13 was the case being passed to the files, right?

14 A. Yes.

15 Q. Let's stay where we are. Carroll has brought you this
16 present, simply passing the case to the files, right?

17 A. Yeah.

18 Q. You had no -- had you ever heard of a case being passed to
19 the files? You had never been involved in any criminal
20 proceedings, right?

21 A. No.

22 Q. As far as you knew -- by the way, you gave a copy of that
23 to Drew's wife, right?

24 A. Yes.

25 Q. You weren't talking to Drew, but you were on speaking terms

1 with his wife, right?

2 A. Yes.

3 Q. And you gave her a copy, in effect, being nice in effect,
4 saying look, show this to Drew, correct?

5 A. Yes.

6 Q. Okay. And you had no -- who told you that passing a case
7 to the files meant it went away? Anybody?

8 A. Well, I just taken it for granted it went away.

9 Q. You wanted to believe that, you were taking it for granted,
10 and that's the way you were operating, perfectly normal, right?

11 A. Yeah.

12 Q. Particularly since you're not a lawyer and you don't
13 understand these things, right? But then out of the blue,
14 Christmas passes, New Year's goes, two days later the papers
15 pick up that that case was passed to the files, right?

16 A. Yes.

17 Q. And the name, what name is on the front page?

18 A. Drew Fairchild.

19 Q. Okay. Could I have, what's the number, publicity, January
20 7th? Let me show you, did you read the Hattiesburg, when there
21 would be something about this case would you read it in the
22 Hattiesburg American?

23 A. Yes, if I was in town.

24 Q. Okay. Let me show you, January 7th, Defendant's Exhibits

25 6. Out of the blue, Weldy passes to inactive file Fairchild

1 drug smuggling charge, right?

2 A. Yes.

3 Q. You knew it already, nobody else had known it until it hit
4 the newspapers, right? Were you happy about that or a little
5 upset it was in the papers?

6 A. Well, I was upset when it was in the papers.

7 Q. Okay. That's reasonable, that makes sense, right. Did you
8 read this article, do you remember reading this article?

9 A. I'm sure I read it. I'm sure I read it.

10 Q. All right. Let me ask you another question, this is when
11 Marvin Rubin, whoever it is on the TV news are sort of
12 questioning why this was done, right?

13 A. Yeah.

14 Q. I notice at the end of the article it even says, a case
15 that has been passed to the files can be reopened for further
16 action so Fairchild, that means Drew, continues to face the
17 possibility of eventually being sentenced. Did you read that?

18 A. Yeah.

19 Q. You saw it, I take it you realized that's not what you
20 understood, but that's what it was saying there in the paper?

21 A. Yes.

22 Q. Did you check whether that was accurate or what you
23 believed was accurate, or did you do nothing?

24 A. Well, I was concerned about it, and I thought that would be
25 the last of it.

1 Q. Okay. But you were wrong?

2 A. Yes.

3 Q. That same month, I mean you thought that was a big
4 headline, that wasn't on the front page. You were going to
5 make the front page on January 27th when the case is brought
6 back to the active status, right?

7 A. Yeah.

8 Q. And there it is, Fairchild case returns to active files,
9 right?

10 A. Yes.

11 Q. Would it be fair to say that, mad would be one way of
12 describing yourself, right?

13 A. Yeah, I was upset, terribly upset.

14 Q. Furious?

15 A. Well, I was real upset.

16 Q. Okay. Here was this case which you thought, first you
17 heard, first you thought the case had been taken care of with
18 the agreement with George Phillips, right?

19 A. Yeah.

20 Q. Then out of the blue he gets indicted in state court,
21 right?

22 A. Yeah.

23 Q. You thought there was some shenanigans going on then,
24 right?

25 A. Yes.

1 Q. Then he makes a deal with Bud Holmes, that's Drew and Bill
2 Porter make a deal with Bud Holmes and I think it's all over,
3 right?

4 A. Yeah.

5 Q. Then the case gets passed to the files in December of 82,
6 only to be brought back a month later, right?

7 A. Yeah.

8 Q. And in the midst of this, some place you recall, somebody
9 is blackmailing you, right?

10 A. Well, that's what I believed.

11 Q. You thought that person was Bud Holmes?

12 A. Yes.

13 Q. I mean that's who was bringing it, moving to push it to the
14 files, bringing it back, that's Bud Holmes being quoted in
15 there, that's whose name is being associated with this, right?

16 A. Yes.

17 Q. Tell us something else. Why is it do you think Carroll
18 Ingram was involved also? Because he brought the copy of that
19 out to your house?

20 A. Well, I gathered from Carroll when he brought that out,
21 that out, that would be the end of it.

22 Q. So when it wasn't the end of it you thought therefore
23 Carroll was involved with Bud in pulling some sort of a
24 blackmail or shake down on you?

25 A. Well, I was suspicious, yes.

1 Q. And your suspicions started to build inside you, right?

2 A. Yes.

3 Q. This is the first real publicity in a year from the time he
4 had cut his deal and pled in January of 82 -- excuse me,
5 January of 1982, this is the first publicity in January of the
6 following year, correct?

7 A. Yeah.

8 Q. And you're some angry, suspicious, you think someone's
9 blackmailing you, namely Holmes and Ingram, right?

10 A. Really I thought Ingram was working behind the scene in it,
11 yeah.

12 Q. Did I describe accurately your state of mind?

13 A. Yes.

14 Q. All right. Let me ask you something. I gather at one
15 point, I'm not again trying to pry, believe me, but at one
16 time, like many others you did a fair amount of drinking,
17 correct?

18 A. Yeah.

19 Q. You've been on the wagon now for some time?

20 A. Well, sometimes I go on the wagon, yeah.

21 Q. Would you, during this period of time, were you doing some
22 drinking, early 83?

23 A. I don't remember.

24 Q. How do we date it, anyway?

25 A. When Skip come out there I was on the wagon then, when he

1 come out there.

2 Q. That's a year later, that's in April of 84?

3 A. Yeah, okay.

4 Q. How long had you been on the wagon then?

5 A. I don't remember.

6 Q. Three or four months?

7 A. Yeah.

8 Q. So is it fair to say most likely in the previous year you
9 were doing some drinking?

10 A. Yeah.

11 Q. Again, believe me, I'm not trying to pry, I have some
12 vices, I do some drinking. It's important I understand, would
13 you drink during the day or evening, when would you do your
14 drinking?

15 A. I start at five-thirty.

16 Q. And keep going to when?

17 A. Until six.

18 Q. And beyond that?

19 A. I eat and --

20 Q. Go to bed?

21 A. Go to bed.

22 Q. So that by seven o'clock or so you've had a fair amount of
23 drink, eaten, am I correct?

24 A. I got a little old brown bottle, with a funnel. I fill
25 that bottle, I drink, watch the NBC news, eat, and go to bed.

1 Q. Okay. When you've drunk that, when you've had that -- how
2 much is that to drink? Doesn't sound like that's a lot to
3 drink?

4 A. Well, it's about six high balls.

5 Q. Sounds like a decent amount?

6 A. It's enough.

7 Q. It will do a number?

8 A. It will what?

9 Q. It can make you a little bit -- a little bit of a buzz,
10 right?

11 A. That's what I drink it for.

12 (Laughter.)

13 Q. I would hope so. Nice way to go to sleep, right?

14 A. Yeah, it helps do that.

15 Q. But it doesn't, I take it, you do it after work because
16 that way it doesn't affect what you're doing, doesn't affect
17 your work, doesn't affect you the next day very much, and if
18 you're a little woozy before you go to bed, doesn't make any
19 difference, right?

20 A. No, that much I drink don't, don't affect me.

21 Q. Okay. Doesn't help your memory or anything at the time,
22 but it doesn't seem to stop you from thinking, correct?

23 A. That's right.

24 Q. In any event, we're in early 1983 and you're terribly,
25 terribly upset. So upset at Holmes and Ingram that you want to

1 talk to someone about it, right?

2 A. Yeah.

3 Q. And you're thinking, who can you talk to, can't talk to
4 Ingram because you think he's part of it, right?

5 A. Yeah.

6 Q. You're looking for some one to talk to?

7 A. Yeah.

8 Q. You are angry at Ingram, right?

9 A. Yes.

10 Q. Let me suggest what occurs at that point. You remember the
11 judge stopping by in your office just to see you; done it the
12 year before just as he had done before on a number of
13 occasions?

14 A. I remember him stopping by, yeah.

15 Q. You remember he came to you sometime in February, right
16 after this, February or early March of 83, when this was
17 boiling up inside you, do you remember that?

18 A. Yeah.

19 Q. And you sat and talked a little bit about the wells, just
20 generally, the fact they were slowing down a little bit, and
21 you mentioned to him the fact, out of the blue, about your son,
22 excuse me -- about the fact that you were being blackmailed by
23 Holmes and Ingram. Do you remember that?

24 A. I remember seeing, that's what I believe, that's the way
25 everything looked.

1 Q. Do you recall, it's important that we -- Wiley, we really
2 need to focus in on this. You're behind your desk. Is he in
3 front of your desk?

4 A. Yes.

5 Q. In a chair, right?

6 A. Yes.

7 Q. Relaxing?

8 A. Yeah.

9 Q. You're angry, you want to -- to you, this is a man who is a
10 judge, right?

11 A. Yes.

12 Q. He's, he's a fair man and you'd like to see if there is
13 something -- you want to get a message over to Bud Holmes, you
14 want to let what's inside you out, correct?

15 A. Yes.

16 Q. And you tell him about, in the way you speak, you're being
17 blackmailed by Bud Holmes, right?

18 A. I told him I believed that's the way --

19 Q. Believed you were being blackmailed by Bud Holmes?

20 A. Yes.

21 Q. Maybe even Carroll Ingram?

22 A. Yes.

23 Q. Well, you knew he was a good friend of Bud Holmes?

24 A. Yes.

25 Q. And of course he knew Carroll Ingram, because Carroll is

1 how he got into the investment?

2 A. Yeah.

3 Q. You had never once before ever discussed Drew's case with
4 him for one second, correct?

5 A. No, I never discussed Drew's case.

6 Q. And out of the blue, you're telling this man something
7 about blackmail by two good friends of his, right?

8 A. Yes.

9 Q. And you even, you don't ask him to do a thing, am I
10 correct?

11 A. That's right.

12 Q. He doesn't even know at that point precisely what you're
13 talking about. Let me withdraw that, that's asking to you
14 conclude what's in his mind and that is not fair. You're
15 telling him this out of the blue, and you're not giving him all
16 the background that you've been living with for the past two
17 years or year and a half, correct?

18 A. I was getting to the point, yes.

19 Q. Okay. And you complain about, you don't complain at all
20 about wanting anything for Drew's case, you want Royals
21 indicted, am I right?

22 A. I didn't -- I figured that, Drew's was indicted because he
23 was my son, I didn't like it because it picked on my son
24 because I had money. Bud Holmes, Bob Royals is good friend,
25 he's a pilot for him, and that's why I said about if they'd go

1 ahead and indict Royals and prosecute him, wouldn't hear a damn
2 word out of me.

3 Q. Let me just point something out. There is a lot of
4 thinking that you have done about this matter over the, before
5 this meeting with judge and after it, correct? A lot has gone
6 on in your mind that you haven't necessarily talked to anyone
7 about, correct?

8 A. That's probably so.

9 Q. Okay. What we're here needing to talk about or hear from
10 you, not what's going on in your mind at the time, but what you
11 said to the judge. Now you told us, do you understand what I'm
12 saying, the distinction?

13 A. (Nods yes.).

14 Q. I don't want you to mix the two together, okay?

15 A. Okay.

16 Q. You told him out of the blue that Bud Holmes and you think
17 even Carroll Ingram are blackmailing you, right?

18 A. Yes.

19 Q. You don't ask him to do anything about Drew's case,
20 correct?

21 A. That's correct.

22 Q. You have never spoken to him before about Drew, correct?

23 A. That's right.

24 Q. And you say something about wanting a man named Royals
25 indicted, correct?

1 A. No, I didn't say I wanted him indicted. I --

2 Q. Go ahead, I'm sorry?

3 A. I said if they will go ahead and indict him and prosecute
4 him ---

5 Q. Wouldn't hear --

6 A. You wouldn't hear a damn word out of me, they were both
7 guilty.

8 Q. You're saying Drew's guilty, and if they prosecute Holmes
9 you, excuse me, prosecute Royals, then you wouldn't hear a word
10 out of me?

11 A. Right.

12 Q. Okay. That's it? That's what you say?

13 A. That's what I said.

14 Q. As far as you knew, he had no awareness of who Royals was,
15 correct? Royals isn't a relative of yours, right?

16 A. Right.

17 Q. It's just a name, correct?

18 A. What's just a name?

19 Q. Did you know whether this man had any awareness of who Bob
20 Royals was when you spoke to him?

21 A. I didn't know whether he would recognize the name or not.
22 I knew that Bob Royals was in the plane when he flew him, he
23 mentioned about flying him somewhere.

24 Q. Who mentioned?

25 A. Bob Royals.

1 Q. You mean Royals may have been a pilot in a plane at one
2 time, and that the judge was on the plane?

3 A. Yeah.

4 Q. Do you know pilots, the name of all pilots who have flown
5 you?

6 A. No.

7 Q. Okay. Royals -- had never been a word in the paper about
8 Royals being associated in the drug bust, correct?

9 A. Correct.

10 Q. Okay. So you have this -- how long did this take, a minute
11 or two? The conversation you described?

12 A. The conversation with --

13 Q. The judge?

14 A. Yeah.

15 Q. Where out of the blue you're saying I'm being blackmailed,
16 there is nothing I'm asking for for Drew, but it's not fair, I
17 wouldn't complain if they indicted Royals, correct?

18 A. That's what I said.

19 Q. And you didn't even, you didn't ask him to do anything for
20 you, correct?

21 A. No.

22 Q. Am I right?

23 A. Yeah.

24 Q. Okay. And what you said is that you don't recall him
25 saying anything, he may have shook his head or grunted --

1 telling you what I heard you say yesterday. That's all you
2 recall, shook his head?

3 A. He, I knew he got the message.

4 Q. Okay. In the grand jury you were asked about this on
5 November 28th, and you said that he didn't, what you said he
6 said, I can show you your testimony, he shade, quote, well let
7 me say, let me mumble some words. Judge said let me mumble
8 some words? Do you want to see your testimony? Page 17, do
9 you want to see your testimony, sir?

10 A. Yeah.

11 Q. Sure. Let me put an exhibit tag on it. Mr. Fairchild, I'm
12 showing you Page 17. Free to read any of it, but it's the page
13 where you describe the conversation, as you have today, then at
14 the bottom, the question is asked to you, what did Judge Nixon
15 say, do you see that?

16 A. Yeah.

17 Q. Read to the jury what you say he said?

18 A. Well, he said, well let me see, let me mumble some words.

19 Q. That's what you told the grand jury he said to you, let me
20 mumble some words?

21 A. Well, he mumbled, he said --

22 Q. That is what you told the grand jury, right?

23 A. Yes, that's looks like what I told the grand jury.

24 Q. So I understand, I know you, you've never seen that before,
25 but that is an accurate, everybody will agree that's an

1 accurate transcript of what you said, okay? That's a recording
2 of what you said. Okay. And now you just tell us, let me, you
3 don't even recall anything he said as you sat on the stand here
4 yesterday, right?

5 A. Well, it just don't, not just alert, up to it --

6 Q. Nobody is finding fault with you, okay. We just need to
7 ask a few questions about it. That, I mean did you go on and
8 talk about some other things on that occasion? Did you ever
9 talk hunting with him? Ever talk about hunting with the judge?

10 A. We probably have, but I don't --

11 Q. You know the judge, he hunts a lot, right?

12 A. Yeah.

13 Q. Do you like to hunt, did you hunt at one point in your
14 life?

15 A. Yeah, but I don't now.

16 Q. Remember spending time that same day talking about hunting?

17 A. I can't recall.

18 Q. Let me refresh your recollection. Do you recall the turkey
19 season was coming up, judge talking about going turkey hunting
20 that year?

21 A. I don't remember it, no.

22 Q. Okay. You do have some recollection sometime talking about
23 hunting with the judge?

24 A. Yeah, I have faint memory of it.

25 Q. Okay. But I take it you had this brief conversation that

—ending a fair amount of time on, but you said a
—said nothing, and you went on and talked about a
—while he sat there, right?

—is clear to you, isn't it, now that you think
—wouldn't have called Carroll to bring him out so
—main to him about Carroll shaking you down,

—did have done that.

—have done that?

—will that, was it equally likely he would just
—in on you as he had done in the past and you chose
—to talk to him?

—sent for him.

—sent for him, do you send for federal judges

—ay sent for him, is that the same as asking
—ing somebody if they could get ahold of him and
—to your office if he could?

—best I remember that I asked Carroll to get ahold

—checked at all with Carroll about that?

1 Q. Ever discuss it with him?

2 A. I hadn't talked to Carroll in two years.

3 Q. Okay.

4 A. Two and a half.

5 Q. But I guess once again the person who could help us on that
6 as to whether or not you spoke to Carroll about the judge
7 coming over to your office is Carroll, he could testify just
8 like you are, right?

9 A. Yes.

10 Q. He could help us on that, right?

11 A. I would think so.

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1 Q. Okay. Have we pretty well -- Well, let me come back to
2 something. The Judge leaves, you, I take it -- Do you recall
3 whether that was in the morning or the afternoon or don't you
4 have any recollection?

5 A. Oh, yeah, it's in the afternoon.

6 Q. Afternoon, you head on home to watch the news like you do
7 everyday?

8 A. Yeah.

9 Q. You watch the news and the sports and knock down a few
10 toddlers?

11 A. Yeah.

12 Q. About six?

13 A. Yeah.

14 Q. Okay. Six is the average. Right?

15 A. Yeah.

16 Q. Your wife is at home?

17 A. Yeah.

18 Q. And you have something to eat, and you're sort of ready to
19 go to bed. Right?

20 A. Yeah.

21 Q. In fact are you in bed already when the phone rings?

22 A. Yeah.

23 Q. Okay. And you don't like being being annoyed when you're
24 in bed already but does your wife answer the phone all the time
25 or do you?

1 A. Oh, sometimes she answers it and sometimes I answer it.

2 Q. In any event you recall speaking to the judge. Right?

3 A. Yep.

4 Q. And speaking to Bud Holmes?

5 A. Yes.

6 Q. Okay. You have been rather, you have a recollection, as I
7 understand it, you have been rather vague as to when various
8 things occur. Do you have really a specific recollection of
9 talking to the judge that evening before Bud, as opposed to Bud
10 first and the judge second?

11 A. Oh, I talked to the judge first.

12 Q. You're sure of that?

13 A. I'm positive.

14 Q. Well, you were positive about some other things. I just
15 want to ask you about this. You were positive the wells were
16 on line also on February in 81, didn't you?

17 A. I thought they were, yeah.

18 Q. And you were wrong, weren't you?

19 A. Yeah.

20 Q. Let's talk about the order of people you talked to that
21 night. The whole thing lasted what, a minute?

22 A. A couple of minutes.

23 Q. And you had six drinks in you by then. Right?

24 A. Yeah.

25 Q. And you talk to two men, both of approximately the same age

1 and you have a concrete recollection you spoke to one before
2 the other?

3 A. Yes. Positive.

4 Q. Why? I'm just curious.

5 A. Because the conversation was so important to me.

6 Q. Okay.

7 A. I thought that was the, for once and for all, that was over
8 with.

9 Q. Well, you say it was so important to you. It was so
10 important to you because the Judge is supposed to have said
11 what?

12 A. Says, you know that, you know that man that we talked about
13 this evening. I said, yeah. He said I'm at his hosue.

14 Q. You understand that to mean Bud Holmes? You knew that he
15 meant Bud Holmes?

16 A. Yeah.

17 Q. Go ahead.

18 A. And he said, I talked to him and everything going to be
19 worked out to your satisfaction.

20 Q. Okay. You had asked -- I'm a little bit confused because
21 you had complained about Bud and Ingram blackmailing you and
22 you weren't claiming at all about, you didn't want anything
23 done for Drew, but what you wanted was Royals indicted, if
24 anything. Right?

25 A. Well, I was bringing Royals up because I believed that

1 Carroll and Bud Holmes knew good and well that a, that Royals
2 was involved and I was trying to raise a sting about it,
3 something might, you know, that I might go to the news media,
4 you know.

5 Q. You weren't threatening to go to the news media, that
6 happens later, doesn't it?

7 A. Well, I was thinking about it at that time.

8 Q. Between what you think and what you say is different.
9 Correct? Am I correct?

10 A. Yeah.

11 Q. So it's important that the jury understand when things
12 occur. You did threaten to go to the news media at least you
13 talked to some people about it in December of 83, we are now in
14 the early part of 83. Correct?

15 A. Yes.

16 Q. We are right after these newspaper articles hit the stands.
17 Right?

18 A. Yeah.

19 Q. Okay. So what you really are looking is for somebody, I
20 mean, you really want somebody else to get himself in the
21 crack, maybe Royals. That will make you feel a little better?

22 A. No, no, I didn't want him to get it.

23 Q. What was it that you wanted?

24 A. I wanted Bud Holmes to live up to what he said would
25 happen.

1 Q. Okay.

2 A. That him and Drew, Bob and Porter had said would happen.

3 Q. What they said would happen is that your son, who had
4 already pled guilty would not get any jail time. Right?

5 A. Yeah.

6 Q. He hadn't gotten any jail time, they hadn't sentenced him
7 yet?

8 A. Yeah, but they said nothing would come of it if they got
9 the other 75, that would be the last you would hear about it.

10 Q. Just so the jury understand it, you're now referring back
11 to an event back in September of 81. Correct? That's what you
12 paid the 75?

13 A. Yeah.

14 Q. That Porter had told you then, Porter and Royals, that if
15 they paid the 75 hundred, the remaining 75 owed to him, nothing
16 would come of it. Correct?

17 A. I don't remember whether Porter was in on it or not, but
18 Drew and Royals had told me that.

19 Q. Well, so we know something --

20 MR. FAWER: Could I have the 75 hundred dollar check,
21 please? I want you to see a document so you don't have any
22 problem when you paid that check it's important you don't take
23 dates and telescope them and mix them all together. Okay?

24 BY MR. FAWER:

25 Q. Your name is Wiley Fairchild, you have an account at the

1 Bank of Hattiesburg. Right?

2 A. Yeah.

3 Q. The 75 hundred check payable to Porter. Right?

4 A. Yeah.

5 Q. September 3, 1981.

6 A. Yeah.

7 Q. So anybody who says to you if you pay the 75 hundred, the
8 case can be taken care of, that would have occurred before
9 September 3, 81. Correct?

10 A. (No response.)

11 Q. Do you understand the question?

12 A. No.

13 Q. Then I'll ask it again, sir. Maybe I can come at it
14 another way. You believe they told you, you believe it was
15 Porter, you don't know if it was Porter but Drew and Royals
16 told you if Porter got his 75 hundred --

17 A. We'd never hear no more about it.

18 Q. Okay. He got his 75 hundred from you on September 3.
19 Right?

20 A. Yes.

21 Q. Therefore that statement was made to you before you gave
22 him the 75 hundred. Right?

23 A. Yeah. Yeah, I would say.

24 Q. In fact it was made to you before your son was indicted a
25 week earlier.

- 1 A. (No response.)
- 2 Q. Do you understand?
- 3 A. Yeah, I understand. I didn't --
- 4 Q. You need to put the dates together. They're crucial.
- 5 A. Well, I thought this was paid to Porter.
- 6 Q. It was. His name is on it --
- 7 A. After he was indicted.
- 8 Q. It was paid five days, seven days after he was indicted?
- 9 A. Yes.
- 10 Q. Okay. The message that came to you, if you pay 75 hundred,
- 11 it will be taken care of. Right?
- 12 A. Yeah.
- 13 Q. So at worst, it had to happen between the date he was
- 14 indicted on August 26. Right?
- 15 A. Yeah.
- 16 Q. And the date you paid him?
- 17 A. Yeah.
- 18 Q. Once you paid him, you believed it would all be taken care
- 19 of?
- 20 A. Yes.
- 21 Q. Right?
- 22 A. Yeah.
- 23 Q. In fact in June of 82, five months later, it seemed to be
- 24 in the sense that your son pled guilty in exchange he would get
- 25 no jail sentence. Right?

1 A. Yeah.

2 Q. \$5,000 fine and some probation?

3 A. Yes.

4 Q. Okay?

5 A. (Nods yes.)

6 Q. Then the only thing that happened, it just hung oh, waiting
7 for the sentencing. Right?

8 A. Yeah.

9 Q. And you're not a lawyer, you don't understand why it hung
10 oh, but what bothered you is for all of a sudden in January of
11 83, these two bombshells hit in the newspaper. Right?

12 A. Yeah.

13 Q. And that's when you went and took the opportunity to speak
14 to Judge Nixon. Right?

15 A. Yeah.

16 Q. Okay. You're comfortable with what you have just
17 described. Right?

18 A. That's the best of my recollection.

19 Q. And you're standing here or sitting here under oath and
20 that is the best of your recollection, based on, for the first
21 time, anybody has shown you all of the documents which can help
22 your mind. Right?

23 A. I think that's a fair statement.

24 Q. Okay. Nobody's ever bothered to put you through the
25 questioning, no one's ever asked you to run through the dates

True

1 logically as you have done with us, and I appreciate it, today.

2 Correct? No one's ever done that before with you. Right?

3 A. No.

4 Q. In the end of 1983, in December of 1983, long after this,

5 Bud Holmes was about to go out of office. You remember that?

6 A. Yes.

7 Q. And he had contacted -- Bill Porter had died the month

8 before. Right?

9 A. Yes.

10 Q. In November Bill died in the plane accident. Correct?

11 A. Yes.

12 Q. In December Bud contacted Drew and said that he wanted to

13 get this thing over with before he left office. Right?

14 A. Yeah.

15 Q. And Drew reported that to you. Right?

16 A. Yes.

17 Q. Made you upset because for some reason you thought it was

18 all over with. Right?

19 A. Yeah, I thought it was all over.

20 Q. Okay. And the next day, that night, you threatened, in

21 fact you called Carroll Ingram and told him you were upset and

22 you were going to go to Marvin Reuben and the newspaper or the

23 TV station. Right?

24 A. Yeah.

25 Q. And the next thing you know, Bud Holmes and Judge McKenzie

1 came to see you the following day early in the morning at the
2 office. Am I right?

3 A. Yes.

4 Q. Judge McKenzie's the same judge that reinstated it to the
5 file. Is that right?

6 A. Yes.

7 Q. And Bud said to you that day, look, I'm Bud Holmes, I'm the
8 only one who knew what the plea agreement was other than Porter
9 because Porter is now dead. Right?

10 A. Yeah, Porter was dead.

11 Q. And Bud made the agreement with Porter, right, the plea
12 agreement?

13 A. Well, I don't know whether he had or not. I was under the
14 impression it would be passed to the files with prejudice and
15 that would be the end of it.

16 Q. I've heard you say that.

17 A. Okay.

18 Q. You say what's in your mind, but I need to find out some
19 events and then we'll deal with that. In December of 83,
20 that's two years after your son had pled guilty and Porter
21 represented him and they made a deal with Bud that he would
22 have no jail time, probation, \$5,000/F fine. Right?

23 A. Yeah.

24 Q. The case was then continued, and continued, continued, and
25 then was removed to the files, inactive files, brought back in

1 early December -- excuse me, early January, 1983 and now we are
2 at the end of the year 1983, Bud's about to leave office.

3 Right? You knew that?

4 A. Yeah.

5 Q. Someone else was taking over the job. Right?

6 A. Yeah.

7 Q. He's telling you, look, let's take care of the sentencing
8 of Drew now, before I leave office, so that I can live up to my
9 commitment. Right?

10 A. He said something to Drew to that effect.

11 Q. He came to see you, that morning, came with a judge, came
12 to your office with the Judge who would be presiding at the
13 sentence. Right?

14 A. He didn't say nothing about it going through with that.

15 Q. What did he come to you for?

16 A. He come to me and he said, Wiley, I want you to get ahold
17 of Drew, said nobody's after Drew, says nobody's after Drew.
18 Says the Judge here could sentence him to 20 years and nobody
19 would get it, says, I don't want you to go to the press as they
20 get things all screwed up and never would hear the last of it.

21 Q. Let me ask you something. Wasn't he trying to tell you
22 that he was not backing off the agreement he had made with Bill
23 Porter?

24 A. He didn't mention that.

25 Q. That's not what he was talking to you about?

1 A. No.

2 Q. He wasn't saying, I'll be happy, even though your son
3 hadn't testified yet, to let him be sentenced so it happens
4 before I leave office?

5 A. No, he didn't say that to me.

6 Q. I guess one person who could testify to it is Dick
7 McKenzie, he's living, well in town, right, hearty and hale,
8 living here in town and he could tell us what was said in your
9 office in his presence that day?

10 A. Yeah, and my brother Rodney Fairchild. I had him sitting
11 there.

12 Q. He can testify, too. Only problem is I think he's been
13 sitting in the courtroom, hasn't he?

14 A. Yes.

15 Q. Here now?

16 A. No.

17 Q. Now, as I understand it, you told us, we have described the
18 events as best you can recall them happening. Right?

19 A. Yes.

20 Q. Everything fits as best you can with your memory. Right?

21 A. Yes.

22 Q. Okay. So when the judge is out there, when you see the
23 Judge in early 83, you're angry because this is, all this
24 publicity because the case had gone to the files and came back
25 off the files. Right?

Fava

1 A. Yeah.

2 Q. Well, then we got to come and ask some questions,
3 additional questions about your testimony, because you told the
4 Grand Jury after you pled, you suddenly changed your testimony,
5 did you not, and told the Grand Jury under oath that what
6 happened after you spoke to the judge is that the case was
7 passed to the files, didn't you? You told that to the Grand
8 Jury.

9 A. Yeah.

10 Q. You told it to us here today. And you were wrong both
11 times, weren't you?

12 A. Well, I thought it was passed to the files.

13 Q. I believe you. But it wasn't what happened. It had
14 already gone to the files and come back off the files, too,
15 hadn't it, sir?

16 A. Well, I knew it had come back, yeah.

17 Q. Well, if it had already come back then it couldn't be, then
18 the conversation with Judge Nixon couldn't happen before it
19 went to the files, could it? 

20 A. Well, when I had this conversation with Judge Nixon, it had
21 not gone to the files.

22 Q. Sir?

23 A. I'm positive of that.

24 Q. Sir, you just told us this is what caused you to call Judge
25 Nixon?

1 A. Well, I said it could have been. I don't remember as I
2 said yesterday what got me upset.

3 Q. There was no other publicity. Can you tell this court, can
4 you tell this jury of anything that would have happened until
5 that publicity there that would have upset you, to cause you to
6 say what you did to the judge?

7 A. Well, I know that something caused it.

8 Q. Well, that's wonderful, Judge -- Excuse me, Mr. Fairchild,
9 but we are in a court and he's on trial for his life and I need
10 you to tell me what it could have been aside from this, could
11 have made you so upset as to talk to the Judge about the
12 blackmail of Holmes and Ingram?

13 A. Well, it was something concerning it.

14 Q. You told us, under oath, in the last 15 minutes, about
15 seven different ways in which you said, yes, it happened after
16 these newscasts?

17 A. Well, I don't know these specific newscasts but something --

18 Q. The events reported in those newscasts.

19 A. Well, I know that when I talked to Judge Nixon, that they
20 had not been passed to the files or I would not have mentioned
21 it to him.

22 THE COURT: Gentlemen, let's take a recess.

23 MR. FAWER: Could I just ask one question before we
24 do that? Just one question.

25 THE COURT: All right.

1 BY MR. FAWER:

2 Q. You mentioned to Judge Nixon passing it to the files? Did
3 you ever testify about that?

4 A. I didn't mention it to Judge Nixon about being passed to
5 the files.

6 Q. What did you just say? You said you wouldn't have --
7 that's all, we'll come back to it in a couple of minutes.

8 Remind me.

9 (Recess.)
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1 THE COURT: Proceed.

2 MR. FAWER: Thank you, Judge.

3 BY MR. FAWER:

4 Q. Mr. Fairchild, let's pick up if we can where we left off.

5 At no time did you ever discuss with Judge Nixon passing the
6 case to the file, am I right?

7 A. No, I didn't discuss with him passing it.

8 Q. You never discussed it with Bud Holmes, either?

9 A. No, I didn't.

10 Q. Okay. The only thing you said about passing it to the
11 files that you knew is one day Carroll came in with the order
12 that you looked at before, which was passing it to the files,
13 around Christmas of 82, right?

14 A. Yeah.

15 Q. You brought that over, made sure, you arranged for Drew's
16 wife to see it, made them a copy so that Drew, who you weren't
17 really on speaking terms with, could see it as well, right?

18 A. That's right.

19 Q. Porter was around at the time, he was still alive, and did
20 you talk to him?

21 A. No.

22 Q. So whatever you learned about, whatever you learned about
23 what that meant, you would have learned it from Drew? No,
24 because you weren't talking to Drew, right?

25 A. Carroll Ingram brought it.

1 Q. I know he brought it. Carroll didn't tell you this meant
2 the case was over and done with, did he? He just brought it to
3 you.

4 A. I was under the distinct impression that it was over with.

5 Q. I understand. When you say that, what we need to do, did
6 someone give you that impression? Did Carroll say that to you?

7 A. He said, I don't remember the words he said. When he
8 brought it I thought that was the absolute end of it.

9 Q. That's what you thought, right?

10 A. Yes.

11 Q. What I'm asking you, did he say that to you or is that
12 something you decided in your mind?

13 A. He said something that made me think that, yes.

14 Q. When you -- a week later you read in the paper the direct
15 opposite of that, you told us you read it, right?

16 A. Yeah.

17 Q. Did you call Carroll up, attorney you relied on you told
18 us, what are you talking about? As far as I read in the paper,
19 they can pull this out at any they want? You never called him
20 up, did you?

21 A. I called Wallace Gunn.

22 Q. Wallace Gunn?

23 A. Yeah.

24 Q. Not what you would call a criminal attorney, right?

25 A. That's right.

1 Q. Oil and gas lawyer?

2 A. Yes.

3 Q. What did Wallace say to you?

4 A. Said get Karl Kepper, he's a criminal --

5 Q. Wait a minute. To be sure, are you sure you talked to him
6 in 19 -- when it was passed to the files he suggested you get
7 Karl Kepper?

8 A. No, when it was brought, when it was brought back out, and
9 when Bud Holmes called Drew and wanted him in come down there
10 and carry out the agreement Bud said he had with Bill Porter.

11 Q. I just want to show you what you just did. I was asking
12 you about an event in January of 1983, that's when the
13 publicity comes out about it being passed to the files, okay?

14 A. Yeah.

15 Q. You just from that, you jumped to saying what you said, you
16 called Gunn who told you to get Karl Kepper, right? Am I
17 right?

18 A. Yeah.

19 Q. Okay. Kepper is a criminal attorney, right?

20 A. Yes.

21 Q. Isn't it a fact that conversation took place a year later
22 after Porter was dead and the question --

23 A. That's what I meant, after --

24 Q. You see what you just did?

25 A. I'm confused, but it was when, it was when it was -- the

1 night before Bud Holmes and Dickey McKenzie come out to the
2 office.

3 Q. That's December 1983. We know that, right?

4 A. Yeah.

5 Q. So you just jumped a year and took a conversation which had
6 happened a year later, from the witness stand, accidentally,
7 put it a year earlier, do you understand that you just did
8 that?

9 A. I don't remember them dates. I don't remember them dates.

10 Q. I understand that. Okay. One way, as I understand it, you
11 had tried to figure out when this incident, this telephone
12 call, this meeting with the judge happened and the telephone
13 call you got that night, okay, and you've been asked by the
14 prosecutors any number of times to try to date it, right?

15 A. Yes.

16 Q. And I take it your recollection, your ability to deal with
17 dates was no better when you were talking to them than it is
18 now, right?

19 A. Well, I know it hadn't been passed to the file when I
20 talked to Judge Nixon.

21 Q. You know that you say because you said that the incident
22 happened and shortly after it it was passed to the files,
23 that's what you told the grand jury, right?

24 A. Yeah.

25 Q. Also what you told us yesterday, right? Am I right?

1 A. Well, it was after I talked to him it was passed to the
2 file.

3 Q. That's what you told us yesterday, right? Today when I
4 showed you these documents, as I understand it, it was your
5 recollection those, bringing it back from the file is what
6 triggered your meeting with Judge Nixon, okay?

7 A. Well, I didn't mean that, no.

8 Q. That's what you said?

9 A. Well, I was confused, that wasn't what I meant.

10 Q. Okay. Well, as I understand it, I've read your grand jury
11 fairly carefully, the number of times you've testified, the way
12 you dated this incident is by the Royals visit to you, right?

13 A. Yeah.

14 Q. Everything you remember, the way you anchored this in your
15 mind, the date of the visit with the judge, is it came right
16 after the Royals visit to you, right? Do you want to see your
17 grand jury testimony?

18 A. Yeah.

19 Q. You do?

20 A. No.

21 Q. I can show you at least ten places where you always said it
22 was the Royals visit, is that correct, you were able to date
23 this from the Royals visit, right?

24 A. Yeah.

25 Q. We've talked a lot about the Royals visit here today,

1 haven't we?

2 A. Yes.

3 Q. Looks like it was in 1981, right?

4 MR. WEINGARTEN: We object, ask can we approach the
5 bench.

6 MR. FAWER: Your Honor, what's the objection?

7 MR. WEINGARTEN: I'd like to approach the bench.

8 (AT THE BENCH:)

9 MR. WEINGARTEN: We have provided defense with ---
10 Royals also visited Joe Crone in prison in 1982.

11 MR. FAWER: Let me tell you something, Reid. You
12 ought to find out the facts. I've spoken to Royals five times.
13 You haven't talked to him. Let me tell you --

14 MR. WEINGARTEN: We've given you the records.

15 MR. FAWER: And the records, I'm telling you when he
16 visited and when he didn't. The records shows visits in August
17 and September, excuse me.

18 MR. WEINGARTEN: And May 4th.

19 MR. FAWER: But that was not what this is about. So
20 you take care of your case, I'll take care of mine.

21 MR. WEINGARTEN: If you're going to examine him --

22 MR. FAWER: You can put it on, I will take care of my
23 examination.

24 MR. WEINGARTEN: Ask fair questions.

25 MR. FAWER: I have always been fair. I've never been

1 accused of not being fair, but I will accuse you of not
2 preparing your case, never having to this day of never
3 interviewing Royals.

4 MR. WEINGARTEN: I don't have to listen to this.

5 THE COURT: Knock it off.

6 MR. FAWER: I'm finished.

7 (Open court:)

8 BY MR. FAWER:

9 Q. Mr. Fairchild, come back to this Royals visit. We
10 recognize that you have, that your memory is not one that,
11 where you fix on dates, you mix up dates very often, correct?

12 A. I don't remember dates very well.

13 Q. That's what I mean. As I was saying, you try, your mind
14 had figured that the Royals visit is what triggered, you use
15 that as the event before which the conversation with the judge
16 took place, right?

17 A. Yes.

18 Q. Okay. Well, if the case -- we do know some event, we know
19 the case was passed to the files December 23, 1982, okay?

20 A. Yeah.

21 Q. Okay. You got it, you got the order a day or so later.
22 How long, if you say the judge talked to you, or you talked to
23 the judge at your office just before or before this was passed
24 to the files, which is what you're saying, how long before
25 that?

1 A. I don't remember how long.

2 Q. A week?

3 A. I don't remember how long.

4 Q. I understand. Can you give us some approximation? Wasn't
5 six months, was it?

6 A. No.

7 Q. A month?

8 A. Probably.

9 Q. All right. I want you as you sit there, I realize you can
10 only do your human best, a month -- are you giving me the
11 outside limits?

12 A. No, I don't remember how long it was.

13 Q. Let's double it, okay?

14 A. I don't remember how long it was.

15 Q. Well, you do think in your mind, you have it set that the
16 thing that happened is the judge, you talked to the judge, the
17 judge talks to Bud Holmes, passed to the files? That's what
18 you told us before I showed you these things, right?

19 A. Yeah, I talked to the judge about it, and then later it was
20 passed to the files. I don't remember how long.

21 Q. From what I've heard you say to the grand jury, or read,
22 that that was the next thing that happened in the case. I mean
23 that's why you figured that what had happened as a result of
24 the visit of the judge was passing it to the files, right?

25 A. That's, me talking to the judge, next thing I remember when

1 Carroll come out there and give me a copy.

2 Q. When I asked you to give approximately how much time?

3 A. I don't remember.

4 Q. I know you don't. But I need to ask you, I don't want to
5 keep asking you, I need you to try to help me, probably not a
6 week, but a month?

7 A. I don't remember how long.

8 Q. But not six months?

9 A. I don't remember how long.

10 Q. Anything we can, any question I could ask you to help you
11 on that?

12 A. No.

13 Q. You mean it could have been six months?

14 A. I don't remember.

15 Q. Crone was no longer in prison in July of 1982. Did you
16 know that?

17 A. I didn't know when he got out.

18 Q. Did you talk to the judge close the December?

19 A. I don't remember when it was.

20 Q. You don't really have much of a recollection of these
21 events, do you, in terms of when things happened?

22 A. I remember very distinctive the important things that
23 happened.

24 Q. You remember the event, but you don't remember the sequence
25 of events?

1 A. I remember me talking to the judge.

2 Q. Nobody is denying that. Nobody is suggesting you didn't?

3 A. And then that night getting a phone call.

4 Q. Nobody says you're wrong. We all agree with you. But you
5 don't know when that happened?

6 A. I know it happened before the thing was passed to the file.

7 Q. Even though this is the only publicity that came at the
8 time, right?

9 A. There was publicity all the time. Come up and get
10 postponed or something, there was publicity all the time.

11 Q. I see. Well, then let's move on. Let's go back to one
12 other thing of interest to touch on. In February -- I didn't
13 ask you something. In February of 81 when these deeds were
14 signed -- Remember that?

15 A. Yeah.

16 Q. You follow us? -- that at that time your son already had
17 his memo of understanding, that was out of the way, he hadn't
18 yet been indicted in the state court, you were completely
19 unconcerned in February of 81 about Drew's case. Correct?

20 A. Yes.

21 Q. Okay. And so that at that time you weren't worried about
22 his case, you had never met Judge Nixon, talked about anything
23 with him at that time, correct?

24 A. Correct.

25 Q. And you had no thought in your mind in February of 81 of

1 even needing any help or anything with Drew, it was all over
2 with, he had made his deal with George Phillips, right?

3 A. Yeah.

4 Q. Why did you plead guilty? What did you plead guilty to?
5 Can you tell this jury?

6 A. I pled guilty because my attorneys advised me and I felt
7 like that I was guilty.

8 Q. Of what?

9 A. Giving a gratuity.

10 Q. You didn't intend any wrongdoing. You've said that on the
11 record a hundred times, right?

12 A. I had no idea that I was committing a crime, absolutely.

13 Q. Did some attorney tell you you had committed a crime?

14 A. Yes.

15 Q. Without having any intent to commit a crime, some attorney
16 told you you had committed one?

17 A. Yes.

18 Q. And you are now a felon because of that?

19 A. Yes.

20 Q. Did these people here tell you you'd committed a crime,
21 Reid Weingarten?

22 A. No.

23 Q. They hadn't?

24 MR. WEINGARTEN: I respectfully object.

25 MR. FAWER: On what basis?

1 MR. WEINGARTEN: What's the point of this.

2 BY MR. FAWER:

3 Q. Did anyone from the government suggest you had committed a
4 crime?

5 MR. WEINGARTEN: Your Honor, the man was indicted,
6 speaks for itself.

7 MR. FAWER: Bull. I didn't know that an indictment
8 meant he was guilty. I thought we have --

9 MR. WEINGARTEN: He was accused of a crime.

10 THE COURT: Gentlemen, let's move along.

11 BY MR. FAWER:

12 Q. You had no intent, as you sit here now, you had no more
13 intent to violate the law than you had in 1981. Am I correct?

14 A. I didn't have no intent in violating the law.

15 Q. By the way, couple of things I just want to clear up with
16 you. Let me show you Defendant's Exhibit 19, the promissory
17 notes which, I don't know, had you ever seen the notes Judge
18 Nixon has signed?

19 A. Oh, after this investigation got started.

20 Q. Okay. But obviously the investigation, you got the
21 payments on the notes long before that, right?

22 A. Oh, yeah.

23 Q. These are all the checks with respect to them?

24 A. Yeah.

25 Q. This, you returned these notes to Judge Nixon when they

1 were paid in full, long before this investigation. Right?

2 A. I don't remember them dates. Billy Riley done that. He
3 didn't consult me over something like that.

4 Q. See whose name is on it? Jarvis'.

5 A. Well, Jarvis then.

6 Q. It would be just from the normal practice, the note gets
7 paid off, it gets sent back to the person who signed the note?

8 A. Yes.

9 Q. That's what happened in this case?

10 A. Yes.

11 Q. Three notes signed paid in full, March, excuse me.

12 September 16, 1982, March 7, 83, March 7, 83?

13 A. Yes.

14 Q. Correct?

15 A. Yes.

16 Q. Sent the notes back because you shouldn't have the notes
17 after they've been paid in full, correct?

18 A. Correct.

19 Q. In fact, later on, after the investigation, you realized,
20 did you not, that you had not calculated the interest that was
21 due on the notes properly, and so you sent a bill to Judge
22 Nixon for the additional money. Right?

23 A. My accountant did.

24 Q. Your accountant did?

25 A. Riley.

1 Q. Riley did?

2 A. Yeah.

3 Q. Okay. And let me show you. That was after, in fact it was
4 after you went to the grand jury. Right?

5 A. I'm almost positive, yeah.

6 Q. And let me show you Defendant's Exhibit 23. This would
7 have been the letter from Riley -- Is that your accountant?

8 A. Yes.

9 Q. -- to the judge asking for some additional monies, right?

10 A. Yes.

11 Q. He apparently made a miscalculation even in asking for the
12 money, and the judge in Defendant's Exhibit 24 sent back the
13 check, explaining what the right amount should be, which was
14 instead of 1149, should have been 951.10, and that's the check
15 he sent to you?

16 A. Right.

17 Q. It would have been deposited in your account?

18 A. Yes.

19 Q. That's Defendant's 24. One other thing I wanted to ask you
20 about that, one other thing. You indicated to me -- oh, I left
21 out a question. That was interest from 1980, right, I mean it
22 picked up the interest as it should have been from February of
23 1980, right?

24 A. I think so. I didn't --

25 Q. The interest, the amounts due on the interest, those were

1 told to the judge or the judge's secretary, are you aware of
2 that, by Jarvis talking to the secretary for the judge, right?

3 A. Well, he was one obviously that was handling it.

4 Q. Fine. And you've told us that at one point I think just
5 before you went to the grand jury you had your administrative
6 assistant prepare a document calculating what your profit
7 margin was on each of the wells that you had sold, the interest
8 that you had assigned to Judge Nixon, right?

9 A. I asked to get it up, yeah.

10 Q. This is what she gave you?

11 A. Yes.

12 Q. And they are accurate as far as you know, those
13 calculations?

14 A. As far as I know.

15 MR. FAWER: May I read that to the jury, Your Honor?
16 May I read this document to the jury?

17 MR. WEINGARTEN: No objection.

18 THE COURT: Very well.

19 BY MR. FAWER:

20 Q. Ladies and gentlemen, on the stationery of W. R. Fairchild,
21 to whom it may concern, dated July 16, 1984. The following
22 figures are based on original costs of the mineral interest in
23 the following three wells in which Judge Walter L. Nixon
24 brought an interest: Wilkie gas unit, Mobile County, Alabama.
25 Bought three overriding royalty acres, 1.8 per cent or 1/55th

1 of what W. R. Fairchild owns. Profit margin of 23.43 times
2 cost of acreage, or 2,343 per cent profit on that well, made by
3 you, on the sale to the judge, right?

4 A. Yeah.

5 Q. L. D. Ross well, Covington County, bought five overriding
6 royalty acres, 1.4 per cent for 1/71st of what Fairchild
7 Windham owns -- let me, Fairchild Windham owned the interest in
8 the Ross?

9 A. Yes.

10 Q. Profit margin of 13.29 times cost of acreage, or 1,329 per
11 cent profit. The third well, Rogers 28-11 well, Marion County,
12 Mississippi. Bought 3 overriding royalty acres, 4.46 per cent,
13 or 1/22nd of what W. R. Fairchild Construction Company owned.
14 Profits margin of 83.13 times cost of acreage 8,313 per cent
15 profit. Respectfully, Lynn S. Jones, administrative assistant,
16 oil division, signed off by Billy Riley, controller.

17 BY MR. FAWER:

18 Q. As I understand it, you had this visit we briefly described
19 or briefly discussed, the one in which Bud Holmes just before
20 going out of office came to your office early one morning with
21 Dickey McKenzie, right?

22 A. Yes.

23 Q. You basically told us about it, Drew didn't have an
24 attorney at the time, right, Porter had died?

25 A. Yeah.

1 Q. And it was, it was right after, right in that period of
2 time that you spoke to Gunn, he suggested hiring another
3 attorney, Karl Kepper, right?

4 A. Yeah.

5 Q. And the case, Bud Holmes leaves office the end of that
6 month, right?

7 A. (Nods yes.)

8 Q. The sentencing has not yet occurred, right?

9 A. I don't remember -- that's right.

10 Q. We move down to 1984, right?

11 A. Right.

12 Q. We did forget one thing. Apparently back in the spring of
13 83 you and Jarvis had a falling out, and you asked him to
14 leave, right?

15 A. Yeah.

16 Q. And he went to work for a law firm in that fall having
17 graduated law school, you paid for, and he went to work for a
18 man who basically was your enemy, right?

19 A. Yes.

20 Q. Zachary?

21 A. Yeah.

22 Q. And you did not know -- did you know anything about Jarvis
23 talking to the FBI at that time?

24 A. No.

25 Q. And had you ever made any attempt on his life to fix the

1 brakes to malfunction or anything like that?

2 A. Absolutely no.

3 Q. Have you ever done, sought to do violence to anybody in
4 your life?

5 A. No.

6 Q. In any event, something happened I take it in the early
7 part of 1984, in the first, third month or so, in which, it
8 angers you enough to ask an associate of yours to go to George?
9 Is that right?

10 A. To go to what?

11 A. I'm talking about sending John Baltar to see George
12 Phillips.

13 Q. Yeah?

14 A. Yeah.

15 Q. That's much more recent. Early April of 1984. What is it
16 that upset you that you called John Baltar, I think he was up
17 in Jackson at the time, am I right?

18 A. Yeah.

19 Q. So we understand, John Baltar works for you?

20 A. Yeah.

21 Q. I don't know, I saw him here earlier, not sure I see him
22 here today. In any event, John acts as a lobbyist at the
23 capitol for you, right?

24 A. Yes.

25 Q. He was in Jackson, something angered you and you called

1 him, right?

2 A. Yeah.

3 Q. Do you recall what that was?

4 A. I think it was Bob Royals come back there was looking for
5 more money or something.

6 Q. Royals again in March of 1984?

7 A. Well, it was, yeah, I think it was. But it's something
8 that angered me.

9 Q. Okay. You don't remember what it was?

10 A. No.

11 Q. But whatever it was, you angrily told John Baltar that Bud
12 Holmes was blackmailing you?

13 A. In my opinion.

14 Q. In your opinion?

15 A. Trying, yeah.

16 Q. Once again, Holmes and Ingram were blackmailing you, right?

17 A. Yeah.

18 Q. Now Holmes wasn't even DA at the time, right?

19 A. I don't remember them dates.

20 Q. Take my word for it. He left office midnight, December 31,
21 1983. Took off his badge, became private citizen Bud Holmes?

22 A. Yeah.

23 Q. Now we're four months later, three and a half months later,
24 early April, 84, you're telling Baltar that you're angry, you
25 want to go to the press in fact, right? Am I correct?

1 A. I don't remember when it was, but I threatened to go to the
2 press. I think it's right at the time Bud went out of office.

3 Q. Okay. That's at the time that Bud and McKenzie come visit
4 you?

5 A. Yeah.

6 Q. But now we are three months later. Time's passed?

7 A. Yes.

8 Q. And one thing you do know, you did send John Baltar
9 complain, to make a complaint to George Phillips in Jackson?

10 Q. Right?

11 A. Yes.

12 Q. And I assume he made the complaint you wanted him to make?

13 A. Yes.

14 Q. And it was that Holmes and Ingram were blackmailing you or
15 you believed that?

16 A. Yeah.

17 Q. Why? What is it that, how were they blackmailing you?

18 A. Well, it's -- There was something happened at that time
19 that caused me, and we working three or four hundred people
20 down in Florida and we got a press plant at Arkansas one one in
21 Shreveport and we got this business all around and I just -- I
22 don't keep them notes. I just don't remember when somebody
23 handles it. That's what John Baltar is for. I give him a
24 problem and I forget about it.

25 Q. One thing you did say that you remember is that when

1 something important happens, like you being blackmailed, you
2 remember those things. Now you're accusing someone who's not
3 even in office of blackmail, Bud Holmes. Right?

4 A. Yeah.

5 Q. What has he got to do with anything that you're interested
6 in at that point?

7 A. Well, it was, it was -- Well, it was something. That's one
8 of them things that I don't remember.

9 Q. Okay. The trial of Watkins had not come up, right, before
10 or after? Watkins is still a fugitive. Right?

11 A. Yeah.

12 Q. To this minute he's still a fugitive. Right?

13 A. As far as I know.

14 Q. Okay. So the sentencing of your son hasn't come up.
15 Right?

16 A. That's right.

17 Q. Okay. But something happened that you cause one of your
18 employees or associates to go talk to the U. S. Attorney and
19 accuse a former district attorney and a prominent attorney in
20 Battiesburg of blackmail. Right?

21 A. Yeah, I asked him to go.

22 Q. You had no idea that at the same time Jarvis had been
23 talking to the FBI correct?

24 A. No, I didn't know he'd been to them.

25 Q. But almost immediately you're paid a visit by some FBI

1 agents. Right?

2 A. Yes.

3 Q. And Ken Whitespunner I think was his name. Right?

4 A. Yeah.

5 Q. And talks to you a couple of times. Right?

6 A. Yes.

7 Q. Next thing you know, you get a call from a man you hadn't
8 spoken to in some time, Ken -- excuse me, Skip Jarvis. Right?

9 A. Yes.

10 Q. Skip tells you he's gotten a call, the FBI wants to talk to
11 him?

12 A. Yes.

13 Q. They want to talk to him because it concerns something
14 about the deeds, the sale of those mineral interests to Judge
15 Nixon. Right?

16 A. Yeah.

17 Q. And he comes to your office and comes in and you talk
18 privately to him. Right?

19 A. Yes.

20 Q. Okay. Now Skip was not someone that you liked at the time.
21 Right?

22 A. Right.

23 Q. But at the same time you knew that what he was telling you
24 about some FBI investigation, that was true because you had
25 started that investigation?

1 A. Yes.

2 Q. You didn't know that he was involved as well from a
3 different angle, but you knew that he was telling you the truth
4 and that you could understand why the FBI would come to him.
5 Right?

6 A. Yes.

7 Q. Okay. And he starts questioning you about the events back
8 in 1981 concerning these deeds. Right?

9 A. Yeah.

10 Q. And you are telling him, and correct me if I'm wrong, we
11 all -- We don't need to, we had the tape of that whole
12 conversation. Okay?

13 A. Yeah.

14 Q. You have seen the transcript of it earlier today. Right?

15 A. Yeah.

16 Q. We could play it again but I think that would just take a
17 lot of time, so I'm just going to ask you some things about it.
18 Every time there was any suggestion -- Well, is it not true
19 that Jarvis tried to suggest to you that there was something to
20 cover up, something to hide about the transaction back in 1981.
21 Right?

22 A. Yes.

23 Q. And every time he said it, you told him there was nothing
24 to it it was perfectly legal. Right?

25 A. I told Jarvis what I wanted him to hear.

1 Q. Well, have you told us anything different? Was the deal
2 perfectly legal?

3 A. Well, I thought it was at the time.

4 Q. You just told us, not ten minutes ago that you never had
5 any intent to commit a crime back in February of 81. Right?

6 A. (No response.)

7 Q. Did you just say that?

8 A. Yes.

9 Q. That's precise and you're telling the truth now. Right?

10 A. Yes.

11 Q. You told the same thing to Jarvis. Right?

12 A. Yes.

13 Q. You have no problem with that, do you?

14 A. I told him what he wanted to hear.

15 Q. But you also told him the -- What he wanted to hear? He
16 was looking to stick it to you, you know that, don't you?

17 A. Well, I know it now.

18 Q. You were telling him precisely what the truth was, that the
19 deal was perfectly legitimate. Didn't you tell him that?

20 A. Yeah.

21 Q. And you have told us the same thing. Right?

22 A. No, I hadn't said that. I said that I didn't have any
23 intent --

24 Q. If you --

25 A. -- to violate the law.

1 Q. You didn't have any intent to violate the law, you hadn't
2 even met Judge Nixon so what was it that was violation of the
3 law? Could you tell us?

4 A. Selling something undervalued.

5 Q. Undervalued?

6 A. Yeah.

7 Q. That's a crime. Who told you that's a crime?

8 A. My attorneys.

9 Q. You might want to think about going to the bar association.
10 In any event, you have told us that and you told Jarvis that
11 the value you placed on it was the proper value at the time the
12 verbal deal was agreed to with Carroll Ingram. Right?

13 A. I told Jarvis that.

14 Q. And you told us that earlier today?

15 A. Yeah.

16 Q. You told the truth earlier today, didn't you?

17 A. Well, a, at the time it was first mentioned.

18 Q. That's right. The value was, in your judgment, 35 hundred,
19 it may have been more in February of 81, but the time that the
20 deal was made, that was a fair market value. Right?

21 A. Well, when the deeds was consummated it was worth 26 or
22 \$28,000.

23 Q. I understand that. But the deal had been cut, the verbal
24 deal had been made a year before that. Correct?

25 A. I don't think it was that long before.

1 Q. When was it cut?

2 A. You would have to ask Carroll. I don't remember.

3 Q. We most certainly will.

4 (Laughter.)

5 You have no recollection of when it was done?

6 A. Well, it was cut before the deeds was made out.

7 Q. Okay. But what you're telling us is Carroll, we do know
8 that the value placed, the value, 95 hundred was the value
9 placed on it when the deal was cut, even though you don't
10 remember when that date was and we need to talk to Carroll to
11 find that out. Right?

12 A. Yeah.

13 Q. Okay. But one thing, one other thing that you said again
14 and again, and you told us today the same thing, you told to
15 Jarvis that that oil and gas deal, in your words, didn't have a
16 damn thing to do with Drew Fairchild. Correct?

17 A. Yes.

18 Q. And that's true today, it was true when you talked to
19 Jarvis and it was true in February of 81. Correct?

20 A. Correct.

21 Q. You told him, as I recall, finally, on that issue, that
22 when you were speaking to him, that your conscience was clear
23 because you hadn't -- had no intent to violate the law, it was
24 notes -- and there was no intent to commit a bribe or do
25 anything in violation of the law, it was a perfectly legitimate

1 deal when it was done back in 81. Correct?

2 A. I don't remember saying back in 81. I remember the words.

3 Q. What words?

4 A. What you just repeated.

5 Q. You didn't use any --

6 A. What you used. I didn't have any intent in violating the
7 law.

8 Q. And back in 1981, when the documents were drawn up, --

9 A. Whenever they were drawn up.

10 Q. We know the date is, February 25, 81.

11 A. Yeah.

12 Q. Okay.

13 MR. JAWER: Bear with me for one moment.

14 (Pause.)

15 BY MR. JAWER:

16 Q. To save us some time, you then were asked to go to the
17 Grand Jury in July of 1984. Right?

18 A. Yes.

19 Q. And you basically, when they questioned you, the whole
20 focus of that inquiry was this oil and gas deal with Judge
21 Nixon. Right?

22 A. Yes.

23 Q. You basically told them the same thing that you have told
24 us and that you told Jarvis, there was no intent to commit a
25 crime, it was a perfectly legitimate deal and it had nothing to

1 do with Drew Fairchild. Correct?

2 A. Well, if that's in my testimony, that's what I said.

3 Q. It most assuredly is, but if you want to see it, I'll be
4 happy to show it to you.

5 A. I don't need to see it.

6 Q. Nevertheless you got indicted for giving the Judge an
7 illegal gratuity in September 1984. Right?

8 A. Yeah.

9 Q. And you're telling us that you had no intent to commit a
10 crime. Right?

11 A. (Nods yes.)

12 Q. And which lawyer, who is this lawyer who told you to plead
13 guilty?

14 MR. WEINGARTEN: I respectfully object to the
15 relevancy, Your Honor.

16 MR. FAWER: Let's not embarrass anybody, you're
17 right. I withdraw that question.

18 BY MR. FAWER:

19 Q. But somebody you paid money to, suggested you should plead
20 guilty?

21 A. Yes.

22 MR. WEINGARTEN: I'm going to object to any
23 conversation this man had with a lawyer.

24 MR. FAWER: He's told us that --

25 MR. WEINGARTEN: I'm objecting now.

1 MR. FAWER: I would object. He has no standing to
2 deal with the attorney-client privilege. The attorney-client
3 privilege belongs to the witness. May I ask the question?

4 THE COURT: Proceed.

5 MR. FAWER: Thank you.

6 BY MR. FAWER:

7 Q. Some lawyer suggested you should plead guilty. Right?

8 A. No, he just said I was guilty as hell.

9 Q. You were guilty as hell.

10 (Laughter.)

11 And was there discussion with anyone, your lawyer or any
12 associates that if you pled and agreed to cooperate with the
13 government against Judge Nixon that you could make a deal with
14 the government?

15 A. Yeah.

16 Q. Okay. There's no question in your mind that the government
17 was interested in bringing a case against Judge Nixon, was
18 there, sir?

19 A. I knew what the, what the Grand Jury was empaneled for.

20 Q. Which was what?

21 MR. WEINGARTEN: Excuse me, Your Honor. What Wiley
22 Fairchild understood --

23 MR. FAWER: That's fine, I withdraw it.

24 BY MR. FAWER:

25 Q. You don't know because you're not on the Grand Jury, you're

1 assuming that. Right?

2 A. Yes.

3 Q. What I'm asking you, let's put it another way. You knew,
4 did you not, and your lawyers told you this or John -- Did you
5 talk to John Baltar when you were doing this?

6 A. Yeah.

7 Q. Talked a lot to John?

8 A. Yes.

9 Q. Give the government something against the Judge and maybe
10 you can make a deal. Right?

11 A. Well, I don't remember the very words, but my lawyers --

12 Q. I don't want to put words in your mouth.

13 A. I don't remember the words. My lawyer went in there and
14 talked, Mr. Mr. Reid Weingarten --

15 Q. I understand this is this is very painful, am I right, to
16 discuss all of these events?

17 A. Yes.

18 Q. Is it fair to say you were of an understanding that if you
19 could give them information that would help them against Judge
20 Nixon, that you could make a deal with the government? Was
21 that your understanding?

22 A. Yes.

23 Q. You then turned around and you, with the help of your other
24 people who were on your payroll and your lawyers, came up with
25 everything that you could think of to tell the government about

1 Judge Nixon. Right?

2 A. I come up with the truth, what I believe to be the truth.

3 Q. Okay. Fine. Let's deal with what you believe to be the
4 truth. That's the only thing we are going to deal with. The
5 way this worked is the government said, before we will make a
6 deal with you, -- Don't worry, we are going to be done in not
7 too long, we are nearing the end. Okay? Just a little bit
8 more. -- the government said to you or to your attorneys and
9 they told you, we are not just going to buy a pig in a poke --
10 Do you know what a pig in a poke is?

11 A. Yes.

12 Q. We are not going to buy a pig in a poke. You're going to
13 tell us what you know and we are going to look at it and, if we
14 like it, we are going to make a deal. Right?

15 A. Yes.

16 Q. You were supposed to go to trial on December 3, 1984.
17 Right?

18 A. Yean.

19 Q. This is all going on in November of 1984. Right?

20 A. Yeah.

21 Q. I guess it's fair to say if there's one thing in this world
22 you prefer not doing, is being in a courtroom. Right?

23 A. That's right.

24 Q. It's sort of ironic, sir, that after it was all said and
25 done, you had to end up just where you didn't want to end up.

1 Right?

2 A. Yes.

3 Q. November of 1984 and where do you go, up to Jackson to talk
4 to the government about a possible deal?

5 A. Yes.

6 Q. And you make what they call, let me see if I can find this,
7 I think it was in writing, here it is, and you have a little
8 conversation on November 1 of 1984 at the FBI office in
9 Jackson, Mississippi. Right?

10 A. Yeah.

11 Q. And the names are on here, it's not surprising, Mr.
12 Weingarten is sitting there questioning you. Right?

13 A. Yeah.

14 Q. He was the prosecutor in your case. Right?

15 A. Yes.

16 Q. He's the one you understood wanted to make a case against
17 the Judge. Right?

18 A. Yes.

19 Q. Okay. And you then go in and you tell him what you know.
20 Right?

21 A. Yes.

22 Q. And, by the way, he doesn't begin, in all fairness by
23 suggesting anything to you, you just, he just tells you, simply
24 makes a statement that you're present, there, the counsel is
25 there and why everybody is here at this meeting and then you go

1 on and he says, this is simply the opening salvo in potential
2 plea negotiations. Right?

3 A. Yes.

4 Q. Let me give you a copy of this so you can follow along in
5 case you have any problem in recalling the events.

6 MR. FAWER: I presume the government has a copy.

7 MR. WEINGARTEN: Yes.

8 BY MR. FAWER:

9 Q. Have you seen that before?

10 A. Yes.

11 Q. And I take it before you went there, you and your attorney,
12 who was with you there, right?

13 A. Yeah.

14 Q. Not only your attorney, Wallace Gunn was with you. Right?

15 A. Yeah.

16 Q. And the gentleman in the back row, John Baltar, was with
17 you as well. Right?

18 A. Yeah.

19 Q. Okay. And you had talked over with the two of them what it
20 is you were going to say to the government on this occasion.
21 Right?

22 A. Yeah.

23 Q. What it was that you knew that you could tell them to maybe
24 work out a plea agreement. Right?

25 A. Yeah.

1 Q. Okay. You didn't start off, as I understand, talking at
2 all about this case. Nothing about the oil and gas
3 transactions, nothing at all about that. You talked about a
4 friend of yours named Preacher Shows from Seminary in
5 Mississippi. Right?

6 A. Yeah.

7 Q. And you told the government that this man, Preacher Shows,
8 his real name is Tom, right?

9 A. Yeah.

10 Q. He's a preacher but I mean he's known as Preacher but he's
11 Tom Shows?

12 A. Yeah.

13 Q. An old friend of yours from childhood, right?

14 A. Yeah.

15 Q. He had a son named Dr. Billy Ray Shows. Right?

16 A. Yeah.

17 Q. Billy Ray had gotten in trouble and had been tried for
18 prescribing without a license or controlled substances or
19 something like that? What was it?

20 A. Controlled substances.

21 Q. And he had been convicted, right?

22 A. Yeah.

23 Q. He had been indicted and tried, is that right? And that he
24 was unhappy with his lawyer?

25 A. Yeah.

1 Q. Am I accurate about what he told you?

2 A. That's what he told me.

3 Q. This is what Shows told you that's what you said?

4 A. Yes.

5 Q. He came to you, his son had been convicted, how long a
6 sentence?

7 A. I think it was six, well, when he come to me, he hadn't
8 been sentenced.

9 Q. Are you sure about that?

10 A. No, I'm not sure.

11 Q. Let me see if I can refresh your recollection. He had
12 already been sentenced but they wanted to get a reduction in
13 sentence?

14 A. Maybe so.

15 Q. You have the document in front of you. You might want to
16 refresh your recollection. And that you said that Preacher
17 Shows told you, came to you with Billy, with Dr. Billy?

18 A. Huh?

19 Q. Did he come to you with Billy Ray?

20 A. Well, he come by hisself sometimes, with Billy Ray
21 sometimes.

22 Q. And you said that Preacher Shows told you, you were asked,
23 or were you asked, who is the judge. Right?

24 A. (Looking at document.)

25 Q. Try the first page, your first answer, see where it says

1 Judge Nixon was the Judge.

2 A. Yeah, well that's all my information come from Preacher
3 Shows.

4 Q. I understand. And you told the government that he wanted
5 to know if you knew anybody in Washington or anybody who could
6 help and you said no, but you heard that Holmes and the judge
7 were friendly and you sent him to Bud Holmes?

8 A. Yes.

9 Q. And that they went to Bud --

10 MR. WEINGARTEN: Excuse me. May we approach --

11 MR. FAWER: Sure. (AT THE BENCH:)

12 MR. FAWER: Your Honor, --

13 MR. WEINGARTEN: I asked you to keep your voice down.

14 MR. FAWER: They allowed this man to go on record of
15 accusing Judge Nixon of doing a fix in a case he wasn't even
16 the judge in. They then brought this out in Grand Jury --

17 MR. WEINGARTEN: And cleared it up.

18 MR. FAWER: Excuse me. You never did. You never
19 brought out the name of the judge.

20 MR. WEINGARTEN: I certainly did.

21 MR. FAWER: Fine. You bring it out on redirect, this
22 man lied to them and accused Judge Nixon of having fixed that
23 case. Judge Nixon had nothing to do with the case, it was
24 Judge Russell, there was no fix, there was no reduction, it was
25 just a lot of nonsense. He was trying to sell information to

1 the government. I have a right to go into that. If you want
2 to go into that --

3 MR. WEINGARTEN: This is impeachment on a collateral
4 matter. This information was false, it was cleared up by the
5 government. If there's an allegation of misconduct on the part
6 of the Grand Jury, that's for you, not the jury.

7 MR. FAWER: It's not collateral impeachment. It's to
8 show his bias and why he's lying to you.

9 MR. WEINGARTEN: Ask him if the proffer was correct.

10 MR. FAWER: I'll ask him. I don't need help from
11 you.

12 MR. WEINGARTEN: The simple truth of this is Wiley
13 Fairchild gave information in the proffer that was incorrect.

14 THE COURT: I'm going to let in anything that goes to
15 credibility.

16 MR. FAWER: Thank you.

17 THE COURT: Overruled.

18 MR. FAWER: Thank you. (IN OPEN COURT:)

19 BY MR. FAWER:

20 Q. And picking up, you sent him to Bud Holmes because, from
21 what you understood, he was a friend of Judge Nixon's. Right?

22 A. Well, he's -- Yeah, he was the one that handled a lot of
23 cases.

24 Q. Send him to Bud because you knew that, you said it, you
25 heard Holmes and Nixon were friends. Right?

1 A. Yeah.

2 Q. That's why you sent Shows to Bud Holmes. Right?

3 A. Yeah.

4 Q. So we understand this all was supposed to have taken place
5 in the late 70's. Right?

6 A. Yeah.

7 Q. Several years before, before Bud was even DA. Am I right?

8 A. Yeah.

9 Q. He was a private attorney at the time?

10 A. Yes.

11 Q. In any event you went on with your story and from what I
12 understand you have alleged to have happened is that Bud got
13 \$10,000 and was able to get the sentence reduced. Correct?

14 A. Yeah.

15 Q. And he shared that money with Judge Nixon. Am I right?

16 A. I didn't say that.

17 Q. Let us look at what you said here. Hold on just one
18 second. Bear with me. Do you recall saying that the reason
19 that you put Nixon in the deal, the mineral deal, you told the
20 government, is that based on what you understood happened in
21 the Shows case, that you could deal with Nixon?

22 A. Yeah, I told them that.

23 Q. You told them that. Right?

24 A. Yes.

25 Q. And so you put in the government's head that that was the

1 basis for why you had dealt in the oil and gas transaction with
2 Judge Nixon. Right?

3 A. Repeat the question.

4 Q. You told the government in your proffer, and again in the
5 grand jury under oath, that the reason that you had gone
6 through with this oil and gas deal is because you felt, based
7 on the Shows incident, that Nixon was a judge, putting it
8 simply, who could be bought?

9 A. Could what?

10 Q. Be bought. You could deal with him?

11 A. Well, I didn't mean that -- put him in because that, if he
12 could do me a favor I figured he would.

13 Q. Did you accuse the judge of getting a part of the --

14 A. No.

15 Q. Did you say that Preacher Shows told you that?

16 A. No, I don't remember Preacher Shows telling me that.

17 Q. Did you suggest that was the reason that you got into the
18 deal with Judge Nixon?

19 A. There on Page 2 is what --

20 Q. Let me read you some of your testimony in the grand jury,
21 see if it refreshes your recollection.

22 "Now did this incident with Dr. Shows take place
23 before you transferred the assignments to Judge Nixon?

24 "Answer: Yes, some two or three years before.

25 "Okay, did that incident influence you at all in your

1 dealings with Judge Nixon?

2 "Well, yeah, yeah.

3 "Question: Why?

4 "Well, in my terminology you could quote deal close
5 quote with Judge Nixon. If you got in trouble he would help
6 you.

7 "Question: How could you quote deal with him?

8 "Answer: By you, well just like Bud got him to
9 reduce that sentence.

10 "Question: Do you have knowledge as to whether or
11 not Bud shared the ten thousand dollars that he received from
12 Preacher Shows with Judge Nixon?

13 "No, no. I don't know.

14 "Question," by Mr. Reid Weingarten, "Do you have an
15 assumption, though?

16 "Answer: Well, I would assume, yes." That's your
17 testimony under oath in the grand jury after you entered into
18 your plea agreement. Do you recall it?

19 A. Yes.

20 Q. Has Reid Weingarten ever told you that you were totally
21 wrong in who was the judge in the Shows case?

22 A. Yes. I was -- Preacher Shows, he told me about going over
23 to Bud's house, see the picture of the judge --

24 Q. Sir, I asked you a question.

25 A. Okay.

1 Q. As you sit on this stand, did anyone ever tell you that
2 Judge Nixon never had anything to do with the Billy Ray Shows
3 case?

4 A. Mr. Weingarten did.

5 Q. After the grand jury, after he put you in the grand jury to
6 testify about it or before?

7 A. After.

8 Q. Okay. He let the grand jury hear all that, right, what I
9 just read to you?

10 A. Yeah.

11 Q. Thank you. And you know now I take it as well that there
12 never was a reduction of sentence in that case, don't you?

13 A. Preacher Shows told me there were.

14 Q. So, I take it we could ask Preacher Shows, you're saying
15 Shows told you the wrong judge, and told you a result that
16 never happened?

17 A. He told me instead of getting eighteen months sentence he
18 got a six months sentence.

19 MR. FAWER: Bear with me one moment, Your Honor.

20 (Pause.)

21 MR. FAWER: I would offer at this time as an exhibit
22 certified record of this court, the docket sheet of United
23 States v. Billy Ray Shows. Would the government like to enter
24 into the stipulation?

25 MR. WEINGARTEN: Yes.

1 MR. FAWER: The judge in the case was Judge Dan
2 Russell. There never was a reduction of sentence, 18 month
3 sentence, motion made by Bud Holmes to reduce, which was
4 denied, am I correct?

5 MR. WEINGARTEN: We will stipulate to the
6 authenticity.

7 MR. FAWER: Do you agree or should I read.

8 MR. WEINGARTEN: I just stipulated to the document
9 you offered.

10 BY MR. FAWER:

11 Q. In any event, coming back to your situation in November of
12 1984, sir, is it fair to say that you were in a situation where
13 there was virtually no limits to which you wouldn't go to avoid
14 going to trial?

15 A. I didn't want to go to trial.

16 Q. You would do anything to avoid it, right?

17 A. No.

18 Q. There was some limits, hey?

19 A. Yeah.

20 Q. Try to put the best date you could on everything, right?
21 Try to come up with the best dates you could?

22 A. Oh, dates on what?

23 Q. On anything the government asked you?

24 A. I told you, I don't remember them dates.

25 Q. Okay. Thought the government might want to hear there was

1 something wrong with the oil and gas transaction, you and your
2 attorneys and your associates came up with something wrong with
3 the oil and gas transaction?

4 A. Repeat the question.

5 Q. You thought the government would like to think, or like to
6 hear that there was something wrong in your dealings with Judge
7 Nixon, so you told them that?

8 A. Well, my opinions were something wrong, sold them too
9 cheap.

10 Q. I see. Anybody ever indicted, did you ever sell anything
11 too cheap in your life?

12 A. Yes.

13 Q. Did you plead guilty to any federal crimes for it?

14 A. No.

15 Q. Let's come back to November of 84. You had to figure out a
16 way to avoid a lengthy jail sentence, what you thought was.
17 More importantly to avoid sitting on a witness stand, sitting
18 as a defendant in a trial, right?

19 A. The big factor that motivated me that my attorney said they
20 thought I would be convicted, and I would serve time. If I was
21 found guilty they would walk over and put the handcuffs on me
22 and carry me to jail, and the sentence would be two years and
23 I'd have to serve eighteen months. By that time, it would take
24 that long to get an appeal.

25 Q. So the only alternative was to make a deal?

1 A. Well, that's one of the reasons I made the deal.

2 Q. And part of the deal is what you said about Preacher Shows
3 and that whole case, the first thing you told them?

4 A. The reason I made a deal, I thought, I thought I was guilty
5 then, and I think I'm guilty now.

6 Q. Of what? Of what, selling too cheap?

7 A. Yes.

8 Q. Aside from selling something that you now think you sold
9 too cheap, even though your profit was a thousand per cent on
10 each one of them, even though you have said on any number of
11 occasions you thought it was a fair price when you made the
12 verbal arrangements, aside from selling it too cheap, what's
13 your crime?

14 A. Just what I've said, selling it too cheap.

15 Q. Selling too cheap?

16 A. At that time it was valued way more than that.

17 Q. At what time?

18 A. Well, the time that the deal was consummated.

19 Q. But that was long after the verbal agreement, right?

20 A. Well, we had this, I told him what wells I was going to put
21 him in, I knew at the time by signing the deeds it was way too
22 cheap, I wasn't concerned. I didn't know it was against the
23 law to sell a public official something too cheap.

24 Q. Then you went to the grand jury as I understand it, before
25 you went you got an agreement from the government, right?

1 A. Yes.

2 Q. And the agreement was that if you plead guilty to selling
3 too cheap, God help us, that they would recommend you don't do
4 any jail time, right?

5 A. Yes.

6 Q. So you made that pact with them, right?

7 A. Yes.

8 Q. And they said all right, we'll dismiss the other count, go
9 recommend this to the judge, right?

10 A. Yes.

11 Q. And you went to the grand jury, right?

12 A. Yes.

13 Q. And went in, they made sure that -- by the way, there was
14 some days that passed between the day -- November 1st is the
15 day on that proffer, is it not, November 1, 1984?

16 A. Yeah.

17 Q. You went to the grand jury on November 28th, didn't you?

18 A. Yes.

19 Q. 27 days passed. At no time did anybody tell you during
20 that period of time that Judge Nixon had nothing to do with the
21 Shows case, did they? They just let you testify to it under
22 oath in the grand jury, didn't they?

23 A. Yeah.

24 Q. Did they let you tell stories about how you believed about
25 how Bill Porter got killed in that plane crash?

1 A. I repeated the street talk.

2 Q. They brought it out from you, right?

3 A. Huh?

4 Q. They asked you about it, let you talk about the street talk
5 about Bill Porter, correct?

6 A. Yeah.

7 Q. They never said to you that's beside the point here, they
8 just let you go on about Bill Porter, you thinking there was
9 some wrongdoing in Bill Porter getting killed in the Gulf of
10 Mexico in a plane crash?

11 A. That was street talk.

12 Q. But you talked about it under oath in the grand jury,
13 right?

14 A. Yeah, that's --

15 Q. And I take it you knew that the only thing, once you had
16 made your deal, which was before you went to the grand jury --
17 by the way, could I have a copy of that plea agreement? Do you
18 have it with you? Before you went to the grand jury and before
19 you entered your plea agreement, did the government, in the
20 person of Reid Weingarten, sent a letter to your attorney Barry
21 Hess, am I right?

22 A. Sent a letter to Barry Hess?

23 Q. Barry was your attorney at the time, right?

24 A. Yes.

25 Q. Have you seen this letter?

1 A. Yeah.

2 MR. FAWER: Thank you. May I read it to the jury?
3 Any objection?

4 MR. WEINGARTEN: No.

5 MR. FAWER: The letter from the department of, on the
6 stationary of the Department of Justice, signed by Mr. Reid
7 Weingarten. Barry Hess, attorney for Wiley Fairchild, dated
8 November 20, 1984, which is three weeks after the proffer we
9 just discussed. Dear Mr. Hess. As you know, your client,
10 Wiley Fairchild, made a proffer to the United States in
11 connection with plea negotiations on November 1, 1984. We have
12 evaluated that proffer and we have concluded that Mr. Fairchild
13 is making a good faith effort to cooperate with the government.
14 If a plea agreement is reached between Mr. Fairchild and the
15 United States consistent with the terms set in New Orleans and
16 memorialized in a separate document attached hereto -- we'll
17 come to that in a minute -- we would expect continuing
18 cooperation from Mr. Fairchild, including complete and truthful
19 testimony before the grand jury and at any and all trials that
20 may follow from this investigation. In the event that we
21 conclude, and it would be solely our determination, that's in
22 parentheses, that such cooperation has been and is forthcoming,
23 we would recommend to the sentencing judge that a prison
24 sentence is not warranted in this case. If we conclude
25 cooperation from Mr. Fairchild is not complete in any manner,

1 we would be free, of course, to modify our recommendations. I
2 know you understand as well that the sentencing judge would not
3 be obliged to follow our recommendations. Sincerely, Reid
4 Weingarten.

5 The attached document is the plea agreement, am I
6 right, Mr. Fairchild?

7 A. Yes.

8 Q. Basically, may I, Your Honor, it's Defendant's Exhibit 29.
9 The plea agreement in that case, the defendant Wiley Fairchild
10 would plead guilty to Count I of the indictment, gratuity, that
11 was pleading guilty to selling too cheap, right?

12 A. Yes.

13 Q. United States will move to dismiss Count II of the
14 indictment for perjury? You hadn't committed perjury, had you?

15 A. No.

16 Q. United States will make known to the sentencing court any
17 and all cooperation which Wiley Fairchild provides. United
18 States Attorney retains the right to allocute at sentencing.
19 Wiley Fairchild will not be prosecuted by the United States for
20 any offenses, the facts of which are known to the United
21 States. Am I right? That's what they told you?

22 A. Yes.

23 Q. And then some time went by. Just bear with me, I'll be
24 done in a minute, Your Honor. I'll be done in a minute.

25 (Pause.)

1 That all occurred in November of 1980. You went to the grand
2 jury shortly after that, we've read from portions of your grand
3 jury. You've testified about it?

4 A. Yes.

5 Q. Including the Shows incident, the Bill Porter death, things
6 of that sort, right?

7 A. Yes.

8 Q. And your cooperation was then made known to Judge Carr as
9 the government had promised, am I right?

10 A. Yes.

11 Q. And they recommended to Judge Carr that you not be given
12 any jail time, right?

13 A. Right.

14 Q. You were there when Reid Weingarten stood up and made that
15 plea on your behalf?

16 A. Yeah.

17 Q. Okay. It wasn't until September of 1985, if I recall,
18 right?

19 A. Yes.

20 Q. That you were sentenced, right?

21 A. Right.

22 Q. One thing intervened though, didn't it. One thing germane
23 here: The judge was indicted, right? Just before you were
24 sentenced?

25 A. Yeah.

1 Q. And you were sentenced at that time to what, tell us again?

2 A. Two years, twenty-two months suspended.

3 Q. And the balance of the time?

4 A. In a halfway house at Jackson.

5 Q. We're talking about I think you told us you ended up
6 spending 29 days?

7 A. 39 days I think it was.

8 Q. 39 days in the halfway house. What you mean by that you
9 would go up there, commute to work every day, right?

10 A. Yes.

11 Q. You would be in Hattiesburg working, chauffeur would drive
12 you up there each day, correct?

13 A. Yes.

14 Q. And he would stay with you overnight at the halfway house?

15 A. That's right.

16 Q. And then he would bring you back the next day in time for
17 work?

18 A. That's right.

19 Q. That lasted for one month and nine days?

20 A. No, it was over a period of two months.

21 Q. Certain days you didn't have to go up there?

22 A. That's right.

23 Q. On weekends would you be there or here?

24 A. No, I would get out on Friday. I didn't have to be back
25 there until Sunday night. Holidays didn't, holidays didn't

1 count.

2 Q. I see. You've now been on the stand for I guess since
3 yesterday morning, am I right, sir?

4 A. Yesterday evening.

5 Q. Yesterday afternoon, I'm sorry?

6 A. Yes.

7 Q. I apologize to the extent I've had to keep you on the stand
8 this long. I hope you understand why it happened?

9 A. I do.

10 Q. I trust I've been courteous with you; have I been?

11 A. I guess so.

12 (Laughter.)

13 Yeah, I'm satisfied.

14 MR. PAWER: I apologize to you for what the
15 government has put you through. No further questions. I
16 tender the witness.

17 REDIRECT EXAMINATION

18 BY MR. WEINGARTEN:

19 Q. Mr. Fairchild, let's talk about this Preacher Shows stuff a
20 second. Where did you get your information about Preacher
21 Shows?

22 A. Shows. Tom Shows, his father.

23 Q. Did you get your information in any way, shape or form from
24 Judge Nixon about Preacher Shows?

25 A. No.

1 Q. Did you have any contact with Judge Nixon about Preacher
2 Shows?

3 A. No.

4 Q. Did you ever indicate that you got your information from-
5 Judge Nixon about Preacher Shows?

6 A. No.

7 Q. Did you ever suggest that you had any inside knowledge
8 about the Preacher Shows situation from Judge Nixon?

9 A. No.

10 Q. Or from anywhere else?

11 A. No.

12 Q. Did you ever represent that you had inside information
13 about Preacher Shows, either to the United States or to the
14 grand jury?

15 A. No.

16 Q. So what you were reporting is you were reporting
17 information that you got from a friend?

18 MR. FAWER: Excuse me. I know I was on cross, maybe
19 he forgets, but he's on direct. I would ask he not be
20 permitted to lead the witness.

21 THE COURT: Proceed.

22 BY MR. WEINGARTEN:

23 Q. The source of your information about this alleged crime was
24 from Preacher Shows?

25 MR. FAWER: I would object to the form of the

1 question. I think it is still direct. I will stand up, with
2 all due respect, and make the objection each time. It did not
3 change the fact he's on redirect. It's still direct, done
4 after I finished my cross. I would hope he has the experience
5 to stay with his direct.

6 MR. WEINGARTEN: The Court has empowered me to
7 proceed.

8 MR. FAWER: To proceed with the next question, not to
9 run rampant over the --

10 THE COURT: Mr. Fawer, we're going to be here another
11 three days if he goes about asking the questions in the normal
12 way. In order to speed this process up, I want to get it done.

13 MR. FAWER: In the interest --

14 THE COURT: And therefore, I'm going to permit him
15 to, if necessary, to ask leading questions.

16 MR. FAWER: On that basis, I withdraw the objection.

17 BY MR. WEINGARTEN:

18 Q. Would you read back the last question, please?

19 (Question read.)

20 A. From Preacher Shows.

21 Q. Did you ever suggest, hint or represent that the
22 information came from Judge Nixon?

23 A. No.

24 Q. Did you ever hint or suggest or make any remark that would
25 lead anyone to believe that you had inside information on this

1 matter?

2 A. No.

3 MR. WEINGARTEN: What is the number of your exhibit,
4 the proffer?

5 MR. FAWER: 26.

6 MR. WEINGARTEN: Is Defense Exhibit 26 in evidence?

7 MR. FAWER: No.

8 MR. WEINGARTEN: I move it into evidence.

9 MR. FAWER: Ask to approach the bench.

10 (At the bench:)

11 MR. FAWER: I strenuously object to that. He knows
12 that that proffer could not be offered by him in direct, but I
13 have a right to cross-examine based on it. It is not
14 substantive evidence, but I can question him in an effort to
15 impeach.

16 THE COURT: What is it?

17 MR. FAWER: It's the proffer. Show the Judge. In
18 November of 1984. It's like offering his grand jury testimony.

19 MR. WEINGARTEN: I'm offering one half of it as a
20 prior consistent statement. I certainly can do that.

21 MR. FAWER: What's the --

22 MR. WEINGARTEN: You impeached him on his testimony
23 about the phone call.

24 MR. FAWER: I never touched on that. I never touched
25 that.

1 THE COURT: Did you talk about that document to him?

2 MR. FAWER: Never once. I used that document solely
3 to raise the Shows incident, and I'll be happy to introduce it,
4 if they want --

5 MR. WEINGARTEN: I too.

6 MR. FAWER: On Shows.

7 MR. WEINGARTEN: No. No.

8 MR. FAWER: The rest of it is no -- you could not do
9 that on direct. If that's the case, we're going to dump all of
10 the after the fact statements in evidence. We're going to
11 enjoy that. That is not the way the trial proceeds. The facts --
12 it's like I have a right if there is a document which there is
13 an inconsistent statement or bears upon impeachment or intent
14 or bias, I can use it. That's what I did. That doesn't give
15 you a right to introduce the document.

16 THE COURT: I agree.

17 MR. WEINGARTEN: Excuse me. Half the document has to
18 do with material that was impeachment, cross-examination
19 material, I can move that in as evidence of a prior consistent
20 statement.

21 MR. FAWER: I disagree. There's been no use of that
22 document for that.

23 MR. WEINGARTEN: You don't need to use it.

24 MR. FAWER: Then you can do the same thing with the
25 grand jury.

1 MR. WEINGARTEN: That's exactly right, as a prior
2 consistent statement. Rule 801.

3 MR. FAWER: 801, the prior consistent, you should
4 understand it, if there is a motive to fabricate. If you don't
5 establish a prior motive for fabrication, that -- that's 801.

6 MR. WEINGARTEN: As long as it's in the in evidence.

7 THE COURT: Why don't you go ahead and question him
8 about it without putting it in evidence.

9 MR. FAWER: Your Honor, I would want a full hearing
10 before that is permitted.

11 THE COURT: I understand.

12 (Open court:)

13 BY MR. WEINGARTEN:

14 Q. Mr. Fairchild, you've been asked a great number of
15 questions about the phone call from the farm to your house
16 after the visit by Judge Nixon. Mr. Fawer asked you a great
17 number of questions about the timing of that. I'm not going to
18 ask you a great number of questions; I'm going to simply ask
19 you, do your very best, as you sit here now, and tell the
20 ladies and gentlemen of this jury whether or not the call from
21 the farm was before or after your son's case was passed to the
22 files?

23 A. It was before.

24 Q. Are you certain of that?

25 A. My conversation with him was before the case was passed to

1 the file.

2 Q. Has the government forced you to say that?

3 A. No.

4 Q. Has the government put any pressure on you to --

5 A. No.

6 Q. -- to say that?

7 A. No.

8 Q. Has the government put the idea of the phone call into your
9 head?

10 A. No.

11 Q. Mr. Fairchild, who got on the phone first, was it Bud
12 Holmes, or was it Judge Nixon?

13 A. Judge Nixon.

14 Q. Has the government suggested to you that it was Judge Nixon
15 that got on the phone first?

16 A. No.

17 Q. Has the government forced you to so testify?

18 A. No.

19 Q. Is it the truth, sir?

20 A. Yes.

21 Q. Is that why you're testifying to it?

22 A. Yes.

23 MR. WEINGARTEN: That's all I have.

24 MR. FAWER: Your Honor, I would move into evidence at
25 this time Defense Exhibit 20, which is production records on

1 A. Yes.

2 Q. When did you first find out?

3 A. Oh, sometime after the plane landed out
4 here at the Hattiesburg Airport. I don't remember
5 how long afterwards.

6 Q. Was it a matter of days, weeks or
7 months to the best of your recollection?

8 A. Oh, I wouldn't-- it wasn't in days and
9 I don't think it was in months. It might have
10 been a month or something like that. I just don't
11 remember.

12 Q. How did you first find out?

13 A. I don't remember.

14 Q. Did-- were you aware of the drug bust
15 at the airport when it happened because of the
16 newspaper publicity?

17 A. Yes, yes.

18 Q. And you were aware that Drew had
19 connections with the airport where the bust was
20 made; is that correct?

21 A. Well, he was one of the co-managers out
22 there.

23 Q. Now, did you ever discuss with Drew the--
24 his possible involvement in the narcotics case?

25 A. Ah, well, just before-- yeah, after a

1 eventually came to represent Drew?

2 A. I'm sorry?

3 Q. Are you aware of what attorney
4 eventually came to represent Drew?

5 A. Yes.

6 Q. Who was that?

7 A. Well, Bill Porter was representing him
8 when he made a deal with George Phillips.

9 Q. And that was in-- on November 25, 1980
10 to the best of your recollection?

11 A. I would say that. Well, I don't
12 remember the dates, I'm not-- I'm just foggy on
13 them dates.

14 Q. And George Phillips, for the benefit of
15 the grand jury, is the United States Attorney and
16 was United States Attorney for the Southern
17 District of Mississippi?

18 A. Yes.

19 Q. And his office is in Jackson?

20 A. Yes.

21 Q. And it's your understanding that Drew
22 went with Bill Porter, as his attorney, to make a
23 deal with George Phillips?

24 A. Yes.

25 Q. And were you aware at that time that he

1 was going to do that?

2 A. I don't recall whether I was aware of
3 it-- I was aware of it or not.

4 Q. Do you recall when you became aware
5 that he had gone to the U. S. Attorney's office?

6 A. Well, if I didn't know it, that he was
7 going that day, and I probably did, but I knew it
8 that night when he got back.

9 Q. So it was your understanding that Drew
10 had more or less placed his fate in the hands of
11 the federal prosecutors?

12 A. Well, he was taking advice from his
13 counsel, I think. That's the way I understood it.

14 Q. Do you have any knowledge as to how
15 Drew came to be represented by Bill Porter?

16 A. Well, not first time, I don't. But the
17 second time, when he got indicted by the Forrest
18 County grand jury, I'm aware of that.

19 Q. Now, do you know-- did you know when he
20 got indicted by the Forrest County grand jury?

21 A. Yes.

22 Q. Approximately when was that?

23 A. Well, then dates, I can't--

24 Q. Would that be-- does it sound right to
25 you that it was in August of 1981?

1 A. Yes.

2 Q. What was your understanding as to the
3 status of Drew's case between the time he made the
4 plea agreement with the U. S. Attorney's office
5 and the time he was indicted by the district
6 attorney in Forrest County?

7 A. Well, I didn't know what the status of
8 it was. I assumed that they was waiting to catch
9 something, somebody, where he could testify
10 against them.

11 Q. In other words, you thought that his
12 case was being handled by the federal prosecutors
13 and that's where--

14 A. Oh, yeah. Yeah.

15 Q. -- his case would be handled?

16 Now, very briefly, do you know a man
17 named Bud Holmes, known as Bud Holmes?

18 A. Yes.

19 Q. And is it your understanding he was the
20 district attorney in Forrest County from
21 approximately 1980 to 1984, thereabouts?

22 A. Yes.

23 Q. And do you know, Mr. Holmes?

24 A. Yes.

25 Q. Can you describe your relationship with

1 him?

2 A. Well, I never did have much
3 relationship with him until Drew was indicted.

4 Q. What was the first time you spoke to
5 him regarding Drew's case if you remember?

6 A. Well, he called me about-- one evening
7 between five and six o'clock and--

8 Q. Is this before or after Drew was
9 indicted by Bud Holmes?

10 A. He'd just been indicted.

11 Q. He'd just indicted?

12 A. Yeah.

13 Q. And what was the nature of that
14 conversation?

15 A. He says, "Your son Drew's just been
16 indicted and tell him to come on down and I'll
17 release him on his own recognizance but he needs to
18 get an attorney. Bill Porter or Carroll Ingram or
19 whoever."

20 Q. We'll get back a little later to your
21 subsequent contacts with Bud Holmes.

22 Do you know a man named Carroll Ingram?

23 A. Yes.

24 Q. And is he in any way related to you?

25 A. Yes.

1 believe you said, it was sent over to Carroll
2 Ingram?

3 A. Yes.

4 Q. What happened next?

5 A. Well, I remember I come in there and
6 the papers was over there and somebody told me,
7 said, Carroll Ingram said back date'em.

8 Q. Who was "somebody"? Was it Carroll
9 Ingram himself that told you?

10 A. No, no, it was not.

11 Q. Did you not tell me at one time in your
12 office that Carroll Ingram told you to back date
13 those deeds?

14 A. I might have but he-- he-- I might have
15 but he did not tell me to back date'em.

16 Q. Why might you have told me in your
17 office that it was Carroll Ingram?

18 A. I understood you to ask me, "Why did
19 they back date'em?" And I said, "Carroll Ingram
20 said back date'em," but he didn't tell me. But
21 the reason it was back dated was because the word
22 come to me that Carroll Ingram said back date'em.

23 Q. Is it possible that the time these
24 things were actually executed was one year after
25 that February 1981?

1 A. Now, what?

2 Q. Is it possible that the actual date of
3 these transactions was February 1981?

4 A. Yeah, yeah, it's possible.

5 Q. And that they were back dated
6 approximately a year?

7 A. Yeah, that's possible, yes.

8 Q. And that the reason they-- they were
9 back dated in your office; is that correct?

10 A. The best of my recollection, yes.

11 Q. And your instructions based on what
12 Carroll Ingram instructed?

13 A. Well, the way something like that
14 happens is you put something down there and
15 somebody says-- you turn, says, "Oh, So-and-so,"
16 and okay. You know, that's the way that thing--
17 you just have to--

18 Q. But it's your testimony that it was
19 back dated based on Carroll Ingram's say so?

20 A. Yes.

21 Q. Do you have any idea why Carroll Ingram
22 told you to back-- have these back dated?

23 A. No. No.

24 Q. And you did it just because he said to
25 do it?

1 A. Yes.

2 Q. Do you have any idea why the date of
3 February 25th, 1980 was selected?

4 A. No

5 Q. Now, if in fact the actual date of
6 these documents was February 1981, that would have
7 been at the time Drew's case was still live before
8 the federal courts. Right?

9 A. I don't-- I don't have the time-- well,
10 that, no, I can't answer that but-- I can't answer
11 that but--

12 Q. I believe you testified that after Drew
13 made his deal with the U. S. Attorney's office and
14 until Drew was indicted by the DA's office it was
15 your understanding that his fate was in the
16 federal system?

17 A. Well, it didn't-- it didn't cross my
18 mind that-- that-- it didn't cross my mind that
19 that-- that it was still in the-- you know, he
20 just asked me to get him a-- put him in that deal
21 and these things just went on and transpired.

22 Q. Now, this turned out to be a very good
23 deal for Judge Nixon; is that correct?

24 A. Yes.

25 Q. And, basically, let me-- you

1 that correct.

2 A. The amounts in the file, yes.

3 Q. This was all for basically a
4 promissory note for ninety-five hundred dollars
5 that he paid?

6 A. Yeah.

7 Q. So it turned out to be a rather good
8 deal for Judge Nixon; is that correct?

9 A. Yes.

10 Q. Is it fair to say that when Carroll
11 Ingram approached you that it was your desire to
12 give a good deal to Judge Nixon?

13 A. Well, I would have hated to put him in
14 a deal that wouldn't have paid out. I'll put it
15 that way.

16 Q. And why would you have wanted to give
17 him a good deal?

18 A. Well, I wouldn't want the case before
19 him or no other judge that I had give a bad deal.

20 Q. So by giving him a good deal, you
21 figured that it would put you in good stead in
22 case there was ever a matter before him?

23 A. Well, he's a human being. He's a human
24 being.

25 Q. So, basically, you gave him a good deal

1 because he was a federal judge and you wanted to
2 be sure that if you ever had a matter before him
3 he would be friendly towards you. Is that fair to
4 say?

5 A. Well, yes, I would say that's a fair
6 statement.

7 Q. Much the same motivation as some of the
8 campaign contributions: that it's better to have
9 people in power look towards you kindly--

10 A. Yeah.

11 Q. -- than to look towards you as being
12 just another person on the street? Is that fair?

13 A. Yes, that's fair. But I never
14 considered it any shape, form, or fashion as a
15 bribe or might be a bribe.

16 Q. But you were aware of the fact that
17 Drew's-- at that time Drew's case might go into
18 the federal courts; is that correct? That there
19 was a possibility?

20 A. Mr. Richter, it didn't cross my mind
21 the judge-- because me and my, I was so outdone
22 with him I wouldn't have much given a damn whether
23 he went to the pen or not. It did not cross my
24 mind that I was doing something that would protect
25 him.

1 Q. Now, can you tell me when Carroll
2 Ingram came to you and made that request?

3 A. No, I can't. I don't remember.

4 Q. And after the first time he came to you,
5 what happened in terms of bringing his request to
6 fruition?

7 A. Oh, I told him I would and-- and what
8 happened after that, I thought that he was going
9 to make out the assignments but--

10 Q. Who is "he"?

11 A. Carroll. But it developed it was
12 "Skip" Jarvis, I think, made out the assignments
13 and-- in the office.

14 Q. Now, when would you say that the deal
15 between you and Judge Nixon, such as it was, was
16 struck?

17 A. (No response.)

18 Q. If you can't give a date, at what point--
19 was the deal struck in conversations between you
20 and Carroll Ingram?

21 A. Yes.

22 Q. Was there ever a time when you
23 negotiated directly with Judge Nixon involving the
24 royalty transactions?

25 A. No.

1 said back date-- back date the instrument.

2 Q. Why are you so sure it wasn't as a
3 result of a conversation between you and Carroll
4 Ingram?

5 A. Well, I-- he just-- I'm not a thousand
6 percent sure but I'm just-- I just know I would
7 have remembered it if he'd of said something to me.

8 Q. Now, try to help us, Mr. Fairchild.
9 How many years have you been in the oil business?

10 A. Oh, since I bought my first royalty in
11 the thirties.

12 Q. So approximately 50 years?

13 A. Yeah, yeah.

14 Q. About how many of those deeds have you
15 seen in those 50 years?

16 A. Just numerous, just a bunch.

17 Q. A thousand?

18 A. Thousands, yes.

19 Q. Can you tell us one reason why there
20 would have been a phony date put on the signature
21 line of that document?

22 A. Because Carroll Ingram said to.

23 Q. Why would Carroll Ingram have said to
24 do it?

25 A. Well, to make the record look better.

1 Q. Why does that make the record look
2 better?

3 A. Well, it would -- well, because-- it
4 was because it was back there, back when it was,
5 and it-- and it looked like the deal was struck
6 back then.

7 Q. Why would he have wanted it to look
8 like the deal was struck in February 1980 rather
9 than early 1981? Why does that make it look
10 better?

11 A. Well, I know what your're getting at
12 but I can't-- I can't think of the proper words to
13 answer it.

14 Q. Do your best.

15 A. Huh?

16 Q. Do your best.

17 A. Well, my son was involved with that
18 drug deal and-- involved in that drug deal and I
19 would assume that that is the reason that he asked
20 that it be back dated.

21 Q. Why do you assume that?

22 A. Well, I just assumed that.

23 Q. All right.

24 A. He had to have a reason to ask that it
25 be back dated.

1 Q. Surely you were aware of Drew's drug
2 deal; is that correct?

3 A. Yes.

4 Q. And you said yesterday that in early
5 1981 that it was your understanding that the case
6 might be brought in federal court; is that correct?
7 Was that your testimony yesterday?

8 A. Yes, I-- yes, I believe that's correct.

9 Q. Did you have any awareness at the time
10 you were conducting this transaction, signing
11 those papers, deciding what property to give to
12 Judge Nixon, did you have any awareness of the
13 possibility that maybe he'd end up with Drew's
14 case?

15 A. It didn't-- it didn't actually cross my
16 mind.

17 Q. Even though this was one of the
18 federal judges in the district and you thought
19 Drew's case was in federal court, it didn't cross
20 your mind; is that your testimony?

21 A. I didn't do this because-- I done it
22 because Carroll asked me to do it. I didn't do it
23 as-- as-- well, because the case might have been
24 before a federal judge.

25 Q. Well, is it your testimony that-- did

1 that fact, that Judge Nixon might be in a position
2 to help Drew's case, have any effect or influence
3 in your setting the terms and carrying out that
4 transaction? Remember you're under oath, Mr.
5 Pairchild.

6 A. Well, repeat the question.

7 Q. Did the fact that Judge Nixon, in your
8 mind, might have had some ability to help in
9 Drew's drug case have any effect on your setting
10 the terms of that transaction and carrying out
11 that transaction?

12 A. Well, him being a human being, yes, I
13 could-- I would have certainly-- I would have
14 certainly-- would have hated to say no, I'm not
15 going to put him in no deal, then it come to pass
16 that Judge Nixon would have had-- got Drew's case.
17 I would have-- I wouldn't have wanted that to
18 happen.

19 Q. So at the time that the deal was struck
20 between you and Carroll Ingram, that was one of
21 the factors in your mind?

22 A. Well, not-- not really. I wasn't too
23 much concerned. We have-- we have a suit from
24 time to time filed. We didn't have no-- nothing
25 pending in federal court at that time, but I'm

1 trying to make it plain to the jurors here that
2 it's-- if he'd of asked me to put Joe Blow in
3 there, I-- no, I wouldn't have done it.

4 Q. You wouldn't have done it?

5 A. No.

6 Q. Is it fair to say that despite the
7 trouble that you have had through the years with
8 Drew that you did not want to see your son to go
9 prison?

10 A. No, I wouldn't want to see him go to
11 prison.

12 Q. And that you thought-- did you think
13 that by entering into this transaction with Judge
14 Nixon you could help possibly avoid Drew going to
15 prison?

16 A. I didn't enter into this because I
17 thought it would keep my son from going to prison.
18 No, I didn't do that.

19 Q. Did you think it might help?

20 A. Well, him being a human being, I would--
21 I would-- I would have to assume that.

22 Q. Mr. Fairchild, you and Carroll Ingram
23 at various times had discussed Drew's criminal
24 problems; is that correct?

25 A. We had discussed it some, not to a

1 some deals-- I sold some property in Achutica
2 (phonetic) Creek Field, a million a hundred
3 thousand dollars, and three years later a man sold
4 one half of it for a million one hundred thousand
5 dollars so I didn't do so good on that. And
6 something like this, I wouldn't-- I wouldn't get
7 down and drive a hard bargain on it. And my
8 dealing with Governor Waller, I didn't drive a
9 hard bargain on that.

10 Q. That was a campaign contribution,
11 wasn't it?

12 A. No, no, it was an oil deal.

13 Q. But the purpose of it was much like the
14 purpose of the campaign contribution?

15 A. Well, but this is after he's already
16 governor, yeah. Well, you can put 'em in the same
17 category.

18 Q. That is kind of the way you viewed this
19 transaction with Judge Nixon; is that correct?

20 A. I guess it would be fair to say that,
21 but I didn't intend it a bribe or in any-- in any
22 way.

23 Q. Well, what good does it do you to gain
24 his favor? His only power is as a judge, right?

25 A. Yeah, but a judge or governor or

1 senator, you get into trouble, they'll call your
2 friends and help you out. That's done all the
3 time.

4 Q. You were aware that Judge Nixon was
5 good friends with Bud Holmes?

6 A. Yeah, yeah.

7 Q. You were aware Judge Nixon was good
8 friends with George Phillips?

9 A. Well, no, I didn't know that.

10 Q. You didn't know that?

11 A. No, I didn't know.

12 Q. But you thought that even if the case
13 didn't go to him, that he could probably help
14 behind the scenes?

15 A. Who? George?

16 Q. No. Judge Nixon.

17 A. Well, it just stands that friends is--
18 helps friends out.

19 Q. And you figured by giving him a good
20 deal you'd be a friend?

21 A. Well, like I say, what you go'na do
22 when somebody asks you to put somebody in there,
23 your son's got something in court? Are you going
24 to tell him no and then let him come up and be the
25 judge that tries him? And I'm trying to make it

1 plain as I can. I don't consider it a bribe, I--
2 it's I done it because I didn't want to do it.

3 Q. Why did you do it then?

4 A. Because I didn't want to say no.

5 Q. Was it your understanding that Carroll
6 Ingram was soliciting this because he knew you
7 would have those fears and the time was right
8 because of that?

9 A. Repeat that question.

10 Q. Was it your understanding, whether
11 spoken or unspoken, when Carroll Ingram came to
12 you and said let's put Judge Nixon in a deal, that
13 he knew you were very vulnerable because of Drew's
14 situation?

15 A. Yeah. Yeah, that's a fair statement.

16 Q. And that at the time he first
17 approached you about this, you, at least, were
18 worried about Drew's situation?

19 A. You know the jury won't believe that at
20 the time that he said it, that he asked me that
21 day, Drew did not cross my mind.

22 Q. When did the connection-- when was the
23 connection made in your mind?

24 A. I don't remember, after that at some
25 time. It-- it's a man in my position, it's all

1 grass out back, he seems like a nice guy, would
2 you have done that?

3 A. No.

4 Q. So it isn't only that Carroll Ingram
5 told you to do it, it was because you thought it
6 would be in your interest to have a federal judge
7 on your side at that time; is that correct?

8 A. Well, I'd say it was I wouldn't have
9 done it for just Joe Blow or somebody. I say
10 again I done it because Carroll Ingram asked me to
11 and I didn't want to be in a position of telling
12 him no and then my son coming up before the judge
13 that could hear it or assign the judge that could
14 hear it.

15 Q. Let me ask you again. Remember you're
16 under oath. Was there any provision, at the time
17 you conveyed these deeds, for Judge Nixon to pay
18 you anything in return for them?

19 A. I do not know.

20 Q. Is it possible that there was no such
21 provision?

22 A. It is possible.

23 Q. And that essentially you weren't
24 viewing this as a business transaction, you were
25 viewing this as a way of pleasing Judge Nixon at

1 Carroll Ingram's request?

2 A. Well, I would say this's a fair
3 statement.

4 Q. Among the documents you gave us, turned
5 over to the grand jury yesterday, was-- one's
6 called-- three papers, on the top of each one,
7 says Negotiable Promissory Note (indicating).

8 Is that correct?

9 A. Yes.

10 Q. And are these identical to the copies
11 you gave us?

12 A. Well, I would think so, yes.

13 Q. And is it fair to characterize these
14 three documents as three promissory notes from
15 Walter Nixon to Fairchild, W. R. Fairchild
16 Construction Company, one in the amount of three
17 thousand dollars, one in the amount of forty-five
18 hundred dollars, and one in the amount of two
19 thousand dollars? Is that correct?

20 A. Yes.

21 Q. And would these represent Judge Nixon's
22 obligations for those royalty deeds?

23 A. Yes.

24 Q. Who prepared those notes?

25 A. I don't know. I think Carroll Ingram.

1 A. From my son, Drew.

2 Q. What did Drew tell you?

3 A. Well, he told me words to that effect.

4 Q. Well, as clear as you can, explain to
5 the grand jury what was the effect. What was the
6 substance of what Drew told you regarding the ten
7 thousand dollars?

8 A. Well, the twenty-five hundred was paid
9 at-- at one time, and for seventy-five hundred
10 more, that it wouldn't-- that it wouldn't--
11 wouldn't nothing be done.

12 Q. Now, the deal wasn't that, "I will
13 represent you for X amount of money," it was "For
14 X amount of money Drew will not have to go to
15 prison"; is that correct?

16 A. (No response)

17 Q. This ten thousand dollars wasn't said
18 in terms of "This is what my time will cost you,"
19 it was in terms of "This is how you can get off"?

20 A. Well, of course I assumed, and I had
21 heard before, that that was the-- that that was
22 what some lawyers charged, was ten thousand
23 dollars on a case like this.

24 Q. But a lawyer, to your understanding,
25 can't make a guarantee, a defense lawyer can't

1 make a guarantee, to his client that he will get
2 the person off, can he?

3 A. No, he can't.

4 Q. And what Porter said wasn't "My
5 representation will cost you ten thousand
6 dollars," the way you understand it is he said "If
7 you pay the ten thousand dollars, Drew will be
8 taken care of"?

9 A. Well, that would be a fair statement,
10 for ten thousand dollars.

11 Q. In other words, you didn't think, when
12 Drew mentioned-- when Drew mentioned the ten
13 thousand dollars to you, was it your understanding
14 that this money was going to help influence people
15 to make the right decision on Drew's case,
16 government people?

17 A. Well, I knew him and Bill Porter and
18 Bud Holmes was-- was good friends and had some
19 business transactions together.

20 Q. And Bud Holmes was the prosecutor and
21 Bill Porter was the defense attorney; is that
22 correct?

23 A. Yes.

24 Q. Have you had any other contact with Bud
25 Holmes in reference to Drew's case?

1 Wallace Gunn and--

2 Q. Just for the grand jury, who is Wallace
3 Gunn?

4 A. He's my attorney. And asked him did he
5 know of a federal law where they could take it out
6 of state court and put it into a federal law. And
7 he said, well, he wasn't a criminal lawyer but
8 Karl Kepper was. And so I told Drew to call him
9 that night and get him to go down and file
10 something in federal court to take it out of the
11 state court.

12 And the next morning I walked in the
13 office and they said, "Bud Holmes called you."
14 and I said, "Well, if he calls again, tell him I'm
15 not in." Said, "Well, he wanted to come out to
16 see you," and I said, "Well, you can't tell him
17 I'm not here," so about 20 minutes later he walked
18 in the office.

19 Q. Was he alone?

20 A. Huh?

21 Q. Was he alone?

22 A. Judge Dickey McKinzie was with him.

23 Q. What time of day was this?

24 A. It was between eight and-- a little
25 after eight o'clock.

1 Q. Pardon?

2 A. A little after eight o'clock in the
3 morning.

4 Q. Could it have been even earlier than
5 that?

6 A. Yes, it could have been. It could be.

7 Q. Who is Judge Dickey McKinzie?

8 A. He's a Forrest County circuit judge.

9 Q. Was it clear to you that he would be
10 the judge handling Drew's case?

11 A. Oh, yeah. Yeah.

12 Q. There's only one Forrest County circuit
13 judge; is that correct?

14 A. Yeah, yeah.

15 Q. What was your reaction when you saw Bud
16 Holmes, the DA, and Dickey McKinzie, the judge,
17 coming to see you?

18 A. Well-- well, I was surprised. I didn't
19 know-- I just didn't know what to-- what they were
20 out there for.

21 Q. What transpired at this meeting?

22 A. They come on back to the office and sat
23 down and Bud says, "Wiley, get ahold of Drew."
24 He says, "Don't get the damned news media into
25 this thing," says, "They screw everything up,

1 never get nothing right," says, "Ain't nobody
2 after-- ain't nobody after him," says, "You won't--
3 just let it slide. Just let it slide."

4 Well, when I get excited, I can't
5 remember, you know.

6 Q. You can't what?

7 A. Can't remember when something just
8 shor'nuf excites me. If somebody calls me on the
9 phone and I'm talking to somebody and then I get
10 another something that upsets me, I can't remember
11 this telephone call.

12 So I sat there and I had my brother,
13 Rodney, in there and somebody else, so I just sat
14 there dumbfounded trying to remember what he had
15 said.

16 Q. Was Rodney in the room when Bud Holmes
17 and Dickey McKinzie was there?

18 A. Yes.

19 Q. He was present during your meeting with
20 Dickey McKinzie and Bud Holmes?

21 A. Yes. And I sat there dumbfounded and I
22 knew he had said something, but finally I said
23 "Well, now, Bud, what do you recommend? He says,
24 "Just be quiet," said, "Nobody-- you'll never hear
25 nothing about this thing, just let it slide." And

1 I said, "Well, that's what we want to do."

2 And so he said something-- he said
3 something to the remarks that "Drew done pleaded
4 guilty but," said, 'ain't nobody after him," said,
5 "Dickey can give him twenty years and ain't
6 nothing nobody could do about it."

7 And so that's-- and he stayed around
8 there, rooted around for words to carry on the
9 conversation a little while, and they got up and
10 left.

11 Q. What was your understanding as to why
12 the judge was present at this meeting? This was
13 in your office, right?

14 A. Well, he-- Bud said he had a good
15 relationship with the judge.

16 Q. Was it made clear to you at this
17 meeting that if you kept your mouth shut and let
18 the thing slide, that Bud would make sure that
19 Drew wouldn't go to prison?

20 A. I was led to believe that.

21 Q. And did-- at least from your
22 perspective, did it seem like Judge McKinzie was
23 at this meeting so that you would know that Holmes
24 had that power?

25 A. Well, the Judge McKinzie had

1 reactivated this on that file and he's very
2 political minded, Judge McKinzie is, and one thing
3 I thought he was out there to assure me that he
4 wasn't out after him, wasn't taking out after my
5 son.

6 Q. Was Dickey McKenzie having to run in an
7 election to become judge?

8 A. Huh?

9 Q. Is there an election?

10 A. No, no. I'm just saying-- no, no, he'd
11 just been elected, hadn't been-- taken office very
12 long. But he's very political minded and he's--
13 he don't want nobody against him who could, you
14 know--

15 Q. In case he needed a contribution for
16 his next campaign?

17 A. I-- well, I really taken it that he was
18 out there so I would not get somebody else to run
19 against him.

20 Q. Did Dickey McKenzie say anything in the
21 course of this meeting?

22 A. Huh?

23 Q. Did Dickey McKinzie say anything in the
24 course of this meeting with Bud Holmes?

25 A. He probably did but, for the life of me,

1 I can't remember a word he said.

2 Q. Did there come a time after this
3 meeting that you expressed your suspicions to a
4 man named Mr. Boltar?

5 A. Mister who?

6 Q. Boltar? Bolcar?

7 A. John Baltor, yeah.

8 Q. Spell his name for the reporter.

9 A. Bwa-l-t-o-r.

10 Q. And what did you ask him to do?

11 A. Well, the very next time the court come
12 up, there Drew's case come up again, and they
13 called Karl Kepper to come over there and sign
14 something to put it off. And I said--

15 Q. Karl Kepper is a criminal defense
16 lawyer in Hattiesburg; is that correct?

17 A. Yes.

18 Q. And he's your lawyer at this time?

19 A. Yes.

20 Q. With this grand jury; is that correct?

21 A. Yes. So when-- I'd been assured time
22 and again there wouldn't be nothing done, see.
23 And so I just says, "Well, the hell with it. I
24 want to get it over with." It drug out here for a
25 year and I told John Baltor to go to George

1 Phillips.

2 Q. George Phillips being the United States
3 Attorney?

4 A. What?

5 Q. George Phillips is the United States
6 Attorney?

7 A. Yeah.

8 Q. All right.

9 A. And see could he investigate and see
10 why that they were picking on Drew and they wasn't
11 doing nothing to his partner.

12 Q. And it's your understanding that as a
13 result of Mr. Baltor going to the United States
14 Attorney, that the FBI eventually came and
15 interviewed you; is that correct?

16 A. Yeah.

17 Q. Did you-- is it your testimony that you
18 felt-- what you felt was that what was going on
19 that was wrong was that Bud Holmes was
20 manipulating or somehow mishandling Drew's case
21 for improper motives?

22 A. I would like to answer that question
23 this way. One Monday morning Bob Royals come
24 there to my office.

25 Q. Who's Bob Royals?

1 A. He's Drew's partner at the airport. He
2 says, "Me and Bill Porter went over to Maxwell Air
3 Force Base to visit Joe Crown."

4 Q. Joe who?

5 A. Crown.

6 Q. Spell that please.

7 A. C-r-o-w-n. That's who was serving time
8 over there that they-- Bill Porter had had some
9 dealings with. And he says, "On the way back,"
10 says, "Bill Porter said that if Drew will get up
11 off his money, he can get out of this." Bob says,
12 "Well, Drew don't have no money." He said, "Well,
13 his ole man's got some money," this is Bob Royals
14 telling me, "...his ole man's got some money."
15 Bob Royals says, "Yes, but that's his money, it's
16 not Drew's." He said, "Well, if he knew his son's
17 going to get his tail in a crack," --that wasn't
18 his exact words-- he said, "he'd get up off of
19 it."

20 I said, "Bob, I've got the message,
21 loud and clear, but the answer is not no, it's
22 hell no."

23 Q. Are you able to date your conversations
24 with Bob Royals?

25 A. Do I remember the date?

1 that?

2 A. Well, when he pleaded guilty to Bud
3 Holmes, he gave'im two minutes to plead guilty or
4 he was going to throw the kitchen-- the kitchen
5 sink at him-- that's not the words but to that
6 effect-- and he had talked with counsel and other
7 counsel and he actually believed if he could of
8 got it in federal court he could have beat'em.
9 See, he didn't think they had enough evidence on
10 him.

11 Q. Drew thought that?

12 A. Yes.

13 Q. Well, hadn't Drew confessed by that
14 point to his involvement in the smuggling?

15 A. He gave him two minutes to confess or
16 he was going to-- well, the words he's going to--

17 Q. Well, hadn't Drew already pled guilty
18 in state court and it was simply a matter of him
19 being sentenced?

20 A. Yes. Yes.

21 Q. Now, you said that at one time after
22 the drug bust you were so mad at Drew that you
23 didn't care if he went to prison. Obviously
24 sometime thereafter you cared very deeply that he
25 didn't go to prison. What had--

1 A. Well, he's my son. I got all-- I got
2 all upset at him at the time and of course I've
3 mellowed since then, sure.

4 Q. What was it that made you change your
5 mind?

6 A. Well, I think it's just human nature.

7 Q. Was it the affection you felt towards
8 your son that made you want to help him?

9 A. (Witness nods head.)

10 Q. I believe it was your testimony that
11 you did not negotiate or discuss the transaction
12 with Judge Nixon that was entered into, that you
13 and Carroll Ingram did whatever discussion there
14 was, is that correct?

15 A. I didn't discuss it with the judge. No,
16 I didn't discuss it-- I don't remember discussing
17 it with the judge. But after Carroll asked me to
18 to put him in a good deal, well, basically Carroll
19 and Jarvis handled it then.

20 Q. And, in other words, you never
21 discussed those three wells with Judge Nixon prior
22 to the transaction being effected?

23 A. No, I don't recall that and I don't--
24 if I had, I think I would know it. I think I
25 would remember it.

1 to what the United States thinks the
2 appropriate sentence should be)
3 And 5. Wiley Fairchild will not be
4 prosecuted by the United States for any
5 offense that the facts of which are now
6 known to the United States.

7 Now, Mr. Fairchild, is it fair to say that that
8 plea agreement was the basis for what happened in Court
9 on Monday?

10 THE WITNESS:

1 Yes.

2 MR. WEINGARTEN:

3 And are you here today to cooperate as best you
4 can with the Grand Jury investigation.

5 THE WITNESS:

6 Yes.

7 MR. WEINGARTEN:

8 Now, when you testified before this group the
9 last time, were you completely truthful?

10 THE WITNESS:

1 No.

2 MR. WEINGARTEN:

3 And why not, sir?

4 THE WITNESS:

5 My son was involved in a drug bust, and I was



1 afraid that it would jeopardize his case.

2 MR. WEINGARTEN:

3 Were there certain people who were advising
4 you as to what you should do when you went to the Grand
5 Jury?

6 THE WITNESS:

7 I was influenced by my attorneys.

8 MR. WEINGARTEN:

9 And as a result of all of those factors, is it fair
10 to say that you were not completely honest at that time?

11 THE WITNESS:

12 Yes. Yes.

13 MR. WEINGARTEN:

14 And are you -- what are you going to do this
15 time? Are you going to be completely honest?

16 THE WITNESS:

17 I'm going to be completely honest to the best
18 of my memory.

19 MR. WEINGARTEN:

20 And is that despite the fact that Drew still
21 has not been sentenced?

22 THE WITNESS:

23 Yes.

24 MR. WEINGARTEN:

25 And the influences and the suggestions and the

1 advice you are receiving now, what are people telling
2 you?

3 THE WITNESS:

4 Well, I changed attorneys, and got some attorneys
5 out of state, and they advised me to come forth and tell
6 the truth.

7 MR. WEINGARTEN:

8 Are you comfortable with that advice, sir?

9 THE WITNESS:

10 Yes.

11 EXAMINATION

12 BY MR. WEINGARTEN:

13 Q. Now, what we are interested in this time, as we
14 were the last time, are those mineral interests that you
15 passed to Judge Nixon, okay?

16 A. Yes.

17 Q. Now, to the best of your recollection, when
18 and by whom were you first approached regarding a deal
19 with Judge Nixon?

20 A. I was approached by Carroll Ingram.

21 Q. Was --

22 A. After the drug bust that my son was involved in.

23 Q. All right. Now, the last time you were here, you
24 said that the approach came before the drug bust. Which
25 is the truth?

1 A. After the drug bust.

2 Q. Are you certain about that?

3 A. Yes.

4 Q. Now, for the record, who is Carroll Ingram?

5 A. He's an attorney here in Hattiesburg and were
6 my attorney for some things at that time.

7 Q. Okay. Is he kin to you?

8 A. He's a second cousin.

9 Q. And to the best of your recollection, when
10 Carroll Ingram approached you after the drug bust, what
11 did he say?

12 A. He says, "I would like you to put Judge Nixon
13 in a good deal."

14 Q. Did he indicate why?

15 A. He didn't -- he didn't say why. I just -- what
16 I knew about that happened in the past, I knew he was a good
17 friend of Judge Nixon, and I didn't ask any questions. I
18 just said, "Well, I will."

19 Q. All right. Now, the Grand Jury has heard evidence
20 that Drew entered into an agreement with the United States
21 in November of 1980. The drug bust took place in August
22 of '80, when would the approach by Carroll Ingram have
23 taken place?

24 A. Between the drug bust and the plea bargain he had
25 with George Phillips.

1 A. No. I wasn't interested in hearing no figures.

2 Q. So, you perceived it to be a blackmail threat.

3 A. Yes.

4 Q. And what did you tell Royals -- you told him "no" --

5 A. Well, he didn't stay around long after I told
6 him that.

7 Q. Okay. How did you feel about that approach from
8 Royals?

9 A. Well, there's he's just as much guilty as my
10 son and coming out there.

11 Q. Did't make you very happy.

12 A. No.

13 Q. In fact, would it be fair to say that it made you
14 very angry?

15 A. Real mad, yeah.

16 Q. What did you do as a result of that?

17 A. I called Carroll and told him I wanted to
18 talk to Judge Nixon.

19 Q. Why did you want to speak with Judge Nixon?

20 A. Well, I just wanted to tell him what was going
21 on.

22 Q. All right. And what happened after that?

23 A. Carroll brought it --

24 Q. To your office?

25 A. -- to my office, yes.

1 Q. All right. And it's an important conversation and
2 with as much precision as you can, tell the Grand Jury
3 what happened after Judge Nixon arrived in your office.

4 A. Well, I was still worked up and was still mad
5 and I repeated what I just repeated about Bob Royals' had
6 told me and I told him that I thought Carroll Ingram was
7 behind the scene and that I told him that I thought my
8 son was guilty but that Bob Royals was too and go on and
9 do whatever he wants to, but prosecute them both, don't
0 pick out my son.

1 Q. Did you tell him that you thought you were getting
2 blackmailed?

3 A. Yes.

4 Q. Did you mention Bud Holmes?

5 A. Yeah. Yeah. I told him that I figured that
6 Bud Holmes was the main one that was behind the
7 blackmail.

8 Q. In fact, did you tell Judge Nixon that you thought
9 that Bud Holmes was the man that was behind the blackmail?

0 A. Yes.

1 Q. All right. What did Judge Nixon say?

2 A. Well, he said, "Well, let me see. Let me
3 mumble some words."

4 Q. Was he committal in any way or did he tell you
5 directly at that time what he was going to do?

1 A. No. No.

2 Q. All right. Mr. Fairchild, as best as you can
3 recall, how much time past between the time that Bob
4 Royals came to your office and the time that Judge Nixon
5 came to your office the second time?

6 A. Why, it wasn't weeks but it could have been days.

7 Q. All right.

8 A. But it seems like it was --

9 Q. A pretty short time.

10 A. Yes. A pretty short time.

11 Q. All right. Did you hear from Judge Nixon again
12 after that second meeting?

13 A. Yes. It was in the evening when he come out
14 there --

15 Q. Was it the evening of the same day he came?

16 A. Yes. He was out there I think about 2:00 or
17 3:00 o'clock and that night, a little after 7:00, he called
18 me and said, "You know the man that we was talking about
19 this evening?" And I said, "Yeah." He says, "Well, I
20 talked to him and he said that everything is all right,
21 going to be all right." I said, "Judge, I sure do
22 appreciate this."

23 Q. Who did you understand him to be speaking about?

24 A. Bud Holmes.

25 Q. And why did you understand that?

A. Well, that was who we talked about that evening, you see.

Q. He was the main person that you were concerned about?

A. Yeah.

Q. All right. And what happened after Judge Nixon said that to you and you responded?

A. Well, I remember thanking him for it. The next thing -- when I get excited sometimes I forget -- but the next thing I distinctly remember and the Judge says, "He wants to talk to you."

Bud got on the phone and he says, "Wiley, when a man asks me to do something, I do it. I don't ask no questions." And I said, "Bud, I appreciate that."

Q. How do you know it was Bud on the phone? Did he identify himself, did you recognize his voice?

A. I recognized his voice.

Q. Would that be the same for Judge Nixon?

A. Yeah. Yeah.

Q. And is there any doubt in your mind that that evening you spoke with Judge Nixon and Bud Holmes?

A. None whatsoever.

Q. Okay. And just say again just in case somebody asked it, what Bud Holmes said to you on the phone that night.

1 A. He says, "Wiley, when this man asks me something--
2 to do something -- I go ahead and do it. I don't ask no
3 questions.

4 Q. Okay. In terms of Drew's case, what was the
5 next thing that happened after this conversation you had
6 with Judge Nixon and Bud Holmes?

7 A. It was passed to the files.

8 Q. Is it your understanding that when a case is
9 passed to the files it means that it is not going to be
10 prosecuted or it is not going to be handled?

11 A. That's my understanding, yes.

12 Q. Did you make a connection in your mind between
13 the conversation you had with Nixon and the passing of the
14 case to file?

15 A. Yes.

16 Q. If the case was in State court at the time, why
17 did you call for Judge Nixon after Bob Royals tried to
18 blackmail you?

19 A. Well, he had said, "If there is anytime that
20 I can help you, I will." And that's why I called him.

21 Q. Did you view him as owing you a favor?

22 A. Yeah.

23 Q. Why?

24 A. Well, because I put him in a good deal.

25 Q. Okay. Is there anything that occurred that you

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1 recollection of saying that.

2 Ms. *Naughton.* Mr. Fairchild, if you had stated, as it
3 says here--if you had stated that Mr. Ingram first approached
4 you after the drug bust, would that have been an incorrect
5 statement, according to your recollection today?

6 Mr. *Fairchild.* I've been over that so many times, I
7 just get confused every time it's brought up, and I just
8 really don't remember.

9 Ms. *Naughton.* So what you are telling me is you just
10 do not know for sure?

11 Mr. *Fairchild.* Just don't know for sure.

12 Ms. *Naughton.* Could have been; it might not have been?

13 Mr. *Fairchild.* Yes, it could have been. I'm not
14 denying it. I'm just saying I don't remember.

15 Ms. *Naughton.* Now getting back to what Carrell told
16 you the first time when he came to you, did he mention a
17 specific amount of money that the judge wanted to invest, or
18 was it up to you to pick the properties and set a price?

19 Mr. *Fairchild.* I don't remember how the negotiations--
20 -I know I was bound to have been the one that--I know I was
21 the one that said what wells we'd put him in, and I know I
22 was the one that set the price. But just who it was at, or
23 who I told, I don't remember.

24 Ms. *Naughton.* When you picked them, though, picked
25 the wells, how did you know how much acreage to convey to him?

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1 Mr. "Fairchild." Yes.

2 Ms. "Naughton." He was not a close friend; he was not a
3 relative. Was the fact he was a Federal judge part of the
4 reason that you put him into the deal?

5 Mr. "Fairchild." He was an influential man. I would
6 say that would have been one of the reasons.

7 Ms. "Naughton." And in fact do you remember ever
8 telling the FBI, in April of 1984, that he was influential
9 and could decide if a fine was \$500,000 or \$250,000?

10 Mr. "Fairchild." I don't remember saying that, but I
11 very well could have said it.

12 Ms. "Naughton." Were you in the habit of selling your
13 interests to people you didn't know?

14 Mr. "Fairchild." Well, I barely knew Governor Waler and
15 I sold him an interest.

16 Ms. "Naughton." Did you do that because he was Governor?

17 Mr. "Fairchild." Because he is an influential man, and
18 an honest man.

19 Ms. "Naughton." When you say because Governor Waler was
20 an influential man, and because Judge Nixon was an influential
21 man, what do you mean by that?

22 Mr. "Fairchild." Well, I figured that I'm proud of the
23 reputation that the Fairchild has got, and I figured that
24 Governor Waler, Judge Nixon, knowing I wasn't doing that
25 because I wanted a favor down the road, specifically a favor

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1 down the road, but if they could help me, they would.

2 Ms. "Naughton." Did you have any more discussions with
3 Carroll Ingram about the structure of the deal?

4 Mr. "Fairchild." I probably did.

5 Ms. "Naughton." Mr. Fairchild, when was it decided that
6 you would actually carry the promissory note for Judge Nixon
7 for his investment?

8 Mr. "Fairchild." I don't remember.

9 Ms. "Naughton." Well, was it before the deeds were
10 signed in February of 1981? Or did that come after?

11 Mr. "Fairchild." I just don't remember. It would
12 probably have been back in the early '80s. It could have
13 been back in the early '80s, but it was--it wasn't too long
14 after I agreed to let him in the wells.

15 Ms. "Naughton." That he wouldn't have to pay cash up
16 front. When was that decided?

17 Mr. "Fairchild." That I don't remember because I wasn't
18 too concerned.

19 Ms. "Naughton." Do you remember this: Was it Carroll
20 Ingram's idea that you allow Judge Nixon to take out a loan
21 to you, that you would carry the note? Was that Carroll's
22 idea, or was it something you offered to do?

23 Mr. "Fairchild." I really don't remember, but I would
24 guess that it's something that Carroll suggested.

25 Ms. "Naughton." And you weren't opposed to that, is

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1 deals, yeah, and would drop the charge.

2 Ms. "Naughton." And is that what happened?

3 Mr. "Fairchild." No.

4 Ms. "Naughton." He did not drop them, did he?

5 Mr. "Fairchild." No.

6 Ms. "Naughton." So you told him about the phone call and
7 he basically did not change the deal?

8 Mr. "Fairchild." No.

9 Ms. "Naughton." You still pled to a felony?

10 Mr. "Fairchild." Huh?

11 Ms. "Naughton." You still pled to a felony?

12 Mr. "Fairchild." Yeah, on the advice of my attorneys.

13 Ms. "Naughton." Now, after you pled guilty and agreed to
14 testify in Judge Nixon's trial, was part of this agreement
15 that you would tell the truth at trial?

16 Mr. "Fairchild." Yes.

17 Ms. "Naughton." Now I want to get back to the issue of-
18 you mentioned that Mr. Weingarten represented to you that he
19 would dismiss the charges, the gratuity charge, if he found
20 there was no connection between the oil deal for Judge Nixon
21 and Drew's case.

22 Is that your understanding?

23 Mr. "Fairchild." He led me to believe that he would,
24 yeah. I don't remember the--I can't quote the words he said,

25 and the exact words, but he led me to believe, and I did

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1 believe.

2 Ms. "Naughton." Now Mr. Fairchild, based on that belief
3 you have, is there anything you said at Judge Nixon's trial,
4 that you said, that was false or wrong, or that you did to
5 please the prosecutor, hoping that he would then dismiss the
6 case against you?

7 Mr. "Fairchild." To the best of my memory, no. I told
8 the truth.

9 Ms. "Naughton." Now did Mr. Weingarten discuss with you
10 the possibility of a pardon?

11 Mr. "Fairchild." Yeah. There was a lot of discussions,
12 and he said he'd do everything he could.

13 Ms. "Naughton." Now was this before or after you
14 testified at Judge Nixon's trial?

15 Mr. "Fairchild." This was before.

16 Ms. "Naughton." And when he said he'd do anything he
17 could, did he say he would get you a pardon or he would make
18 efforts to get you a pardon?

19 In other words, did he explain how a pardon worked here?

20 Mr. "Fairchild." He didn't promise to get a pardon. He
21 just led me to believe he'd do everything he could to help me.

22 Ms. "Naughton." And did you also discuss Drew's case
23 with Reid Weingarten? By then the Federal Government had
24 indicted Drew as well, right?

25 Mr. "Fairchild." Yes.

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1 Ms. "Naughton." And Reid was handling that case,
2 correct?

3 Mr. "Fairchild." Yeah.

4 Ms. "Naughton." Mr. Weingarten was handling that. Did
5 he ever promise that he would seek leniency for Drew or
6 dismiss his case or show any leniency towards Drew if you
7 would testify a certain way at Judge Nixon's trial?

8 Mr. "Fairchild." Well, what he said, he'd do what he
9 could to help Drew.

10 Ms. "Naughton." But did that depend upon what you said
11 at trial, or was that just a representation he was making to
12 you about how he would handle Drew's case?

13 Mr. "Fairchild." Well, he said just what I said a while
14 ago. He said he'd do everything he could to help.

15 Ms. "Naughton." Did he ever tell you that Drew's case,
16 how Drew's case ended up, would depend on your testimony at
17 Judge Nixon's trial?

18 Mr. "Fairchild." No, he didn't put it that way. He led
19 me to believe if I got up there and told the truth, that he
20 would do everything he could to help Drew, and I believed he
21 would.

22 Ms. "Naughton." Again, did anything that the Government
23 attorney represented to you regarding Drew's case, or a pardon
24 for either you or Drew--did any of those representations
25 cause you to testify falsely or in a misleading manner in

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1 Judge Nixon's trial?

2 Mr. *Fairchild.* No.

3 Ms. *Naughton.* Did the Government attorney ever write
4 a script for you to follow as your testimony?

5 Mr. *Fairchild.* Baltar went up to the Howard Johnson
6 hotel and picked them up, and they came up down to our office
7 and we discussed, and Baltar made some notes, and then Baltar
8 got my secretary to type them up, and there was some questions
9 and answers.

10 Ms. *Naughton.* So these are notes that Mr. Baltar
11 wrote, is that correct?

12 Mr. *Fairchild.* Yeah.

13 Ms. *Naughton.* And he was working for you at the time?

14 Mr. *Fairchild.* Yeah.

15 Ms. *Naughton.* And he had them typed up and gave them
16 to you, is that right?

17 Mr. *Fairchild.* Yeah.

18 Ms. *Naughton.* To your knowledge, did Mr. Weingarten
19 write any of those notes?

20 Mr. *Fairchild.* Well, he was in the room when Mr.
21 Baltar was making the notes to be typed up.

22 Ms. *Naughton.* Did you know if Reid Weingarten saw
23 those notes?

24 Mr. *Fairchild.* I don't know whether he saw them after
25 they were typed up, or not.

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1 Ms. *Naughton.* Do you know if he saw them before they
2 were typed up? Actually read them?

3 Mr. *Fairchild.* Hun?

4 Ms. *Naughton.* Do you know if he actually read them
5 before they were typed up?

6 Mr. *Fairchild.* I don't know whether he--Baltar was
7 down there helping out all he could with the trial, and I
8 assumed that Weingarten saw, after it was typed up. Baltar
9 carried a copy of it with him and I had a copy with me at all
10 times from there until--

11 Ms. *Naughton.* Okay. Did Mr. Weingarten ever tell you
12 to use those notes while you were testifying? Did he ever
13 tell you that?

14 Mr. *Fairchild.* No, not that--Mr. Weingarten was
15 sitting there and Baltar was sitting right over there, and
16 taking the notes down, and here's the questions I'm going to
17 answer--ask you, and Baltar said, well, the answer would be--
18 or he'd ask me what the answer was. And you know, we was all
19 three there when all--when Baltar made all them notes.

20 Ms. *Naughton.* Was there anything in those notes, that
21 you can recall now, that was not true?

22 Mr. *Fairchild.* No.

23 Ms. *Naughton.* At any time, Mr. Fairchild, did anyone
24 for the Government, whether it be FBI or the Department of
25 Justice, instruct you to lie or in any way change your

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1 testimony at Judge Nixon's trial?

2 Mr. *Fairchild.* Repeat the question.

3 Ms. *Naughton.* At any time did any Government attorney
4 or member of the FBI instruct you to lie, or in any way
5 testify against what your recollection was at Judge Nixon's
6 trial?

7 Mr. *Fairchild.* If they did, I don't remember it.

8 Ms. *Naughton.* I have to ask about one more thing.
9 You had mentioned--I want to go back for a minute. After you
10 fired Skip Jarvis, he came around about six months later or
11 so, didn't he, and he was actually wired up? That is, the FBI
12 had put wire recording devices on him so he could pick up the
13 conversation. Is that right?

14 Mr. *Fairchild.* Yeah.

15 Ms. *Naughton.* Now you were not aware that he was
16 wired up at the time you talked to him?

17 Mr. *Fairchild.* No; no.

18 Ms. *Naughton.* And he was telling you he was inter-
19 viewed by the FBI, and he wanted to talk to you so that you
20 two could get your stories straight. Is that the gist of it?

21 Mr. *Fairchild.* Yes.

22 Ms. *Naughton.* And you told him, didn't you, that the
23 oil deal with Judge Nixon was not a bribe and was not
24 connected to Drew's case, is that right?

Mr. *Fairchild.* That's right.

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/30/84

JOHN BALTAR, Telephone No. (601) 544-1151, Hattiesburg, Mississippi, telephonically contacted Special Agent in Charge WELDON L. KENNEDY.

BALTAR stated that he was in contact last Sunday, October 28, 1984, with Attorney General ED PITTMAN, State of Mississippi, regarding the case being brought by the United States Government against WILEY FAIRCHILD.

He stated that Mr. PITTMAN recontacted him today, Tuesday, October 30, 1984, and advised that Mr. PITTMAN had personally conferred with Special Agent in Charge (SAC) WELDON L. KENNEDY concerning the matter. Mr. PITTMAN requested that he (BALTAR) make direct contact with SAC KENNEDY.

BALTAR indicated that WILEY FAIRCHILD is seeking immunity from prosecution by the Federal Government because of his involvement with United States District Judge WALTER L. NIXON and others. BALTAR stated that FAIRCHILD has received bad advice from his attorneys who had counseled him against cooperating fully with the United States Government. The attorneys had assured Mr. FAIRCHILD that the Federal Government did not have a solid prosecutable case against Mr. FAIRCHILD, and that if he were to cooperate with the Government and testify against others involved in the situation, that it would be against his best interests. The attorneys further assured Mr. FAIRCHILD that the other persons involved with Mr. FAIRCHILD in the situation currently being investigated were honorable men, and that there was no criminal intent on anyone's part in any of the events that transpired.

BALTAR stated that Mr. FAIRCHILD now realizes that the Federal Government does intend to prosecute him if he fails to cooperate fully with the investigation. He, therefore, has decided to extend his full cooperation by telling the entire story and is willing to not only testify to these facts, but is willing to take a Polygraph examination if requested.

BALTAR was reluctant to provide any details concerning evidence which Mr. FAIRCHILD might be able to provide, but stated that it would certainly be well worth the Government's agreement to Mr. FAIRCHILD's terms because his testimony would be extremely helpful in the Government's case. BALTAR indicated that at least

Interviewed on 10/30/84 at Jackson, Mississippi File # JACKSON 58B-109-7

SPECIAL AGENT IN CHARGE

by WELDON L. KENNEDY:bbh

Date dictated 10/30/84

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one item of evidence would concern a telephone call to WILEY FAIRCHILD from District Attorney BUD HOLMES with United States District Judge NIXON also on the line. This call had something to do with the handling of the prosecution of WILEY FAIRCHILD's son, DREW FAIRCHILD. Mr. BALTAR requested that Departmental Attorney REID WEINGARTEN be contacted by SAC KENNEDY and requested to agree to a meeting at the earliest possible time in order that Mr. FAIRCHILD could discuss these matters with Mr. WEINGARTEN and Mr. KENNEDY.

Subsequent to the first telephone conversation with Mr. BALTAR, he telephonically recontacted SAC KENNEDY on October 30, 1984. He reiterated that Mr. FAIRCHILD was seeking immunity from any Federal prosecution with regard to the case involving Judge NIXON and others. He stated that in return, Mr. FAIRCHILD would provide testimony detailing extremely important information which would be of invaluable assistance to the United States Government. He also reiterated that from the very outset of this case, Mr. FAIRCHILD was under extreme pressure by BUD HOLMES and others to transfer royalties to Judge NIXON. Although FAIRCHILD did not realize by making such payments he was doing anything wrong, he felt that the payments were being extorted from him due to the fact that his son, DREW FAIRCHILD, was subject to possible prosecution by the Federal Government as well as by the State of Mississippi.

SAC KENNEDY agreed to relay this information to United States Departmental Attorney REID WEINGARTEN. BALTAR asked SAC KENNEDY if in return for FAIRCHILD's cooperation the Federal Government would dismiss all charges against him. SAC KENNEDY advised BALTAR that that decision was solely within the purview of the Departmental Attorneys handling the case. Whatever agreement was finally reached between Mr. FAIRCHILD and the United States Government, SAC KENNEDY pointed out that it would be in his best interests to cooperate fully and completely and not hold back information as he had done up until this point. BALTAR was further advised that only if Mr. FAIRCHILD could furnish creditable accurate and verifiable information which was crucial to the Government's case would there be any consideration with regard to a plea bargain or other negotiation of the charges against him.

1 believe you.

2 Mr. *Stewart.* Okay. Now, I believe you testified
3 yesterday that you had not mentioned the phone call previously
4 because you just did not put--it hadn't come across your
5 mind. You hadn't put any significance--.

6 Mr. *Fairchild.* It just hadn't registered with me.

7 Mr. *Stewart.* And when--.

8 Mr. *Fairchild.* It just hadn't--.

9 Mr. *Stewart.* I'm sorry. Go ahead.

10 Mr. *Fairchild.* Well, when Mr. Weingarten told me and
11 my attorneys that he needed a smoking gun, well, I lay awake
12 at night thinking about anything that come up, and that's all
13 that I could come up with.

14 Mr. *Stewart.* Okay, and it hadn't come up before
15 because you just hadn't put any significance to it, is that
16 right?

17 Mr. *Fairchild.* That's right.

18 Mr. *Stewart.* Okay, and you did strike a deal under
19 which you agreed to give complete and truthful testimony
20 before the grand jury and at other trials?

21 Mr. *Fairchild.* Yes.

22 Mr. *Stewart.* All right, and the prosecutors agreed
23 that they would recommend no jail time for you, is that right?

Mr. *Fairchild.* Yes.

Mr. *Stewart.* All right, and you went to the grand

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1 get you a pardon, is that right?

2 Mr. *Fairchild.* Yes, yes, I believe it.

3 Mr. *Stewart.* Okay, and if he has said under oath that
4 he didn't make that statement, then your recollection is just
5 different, isn't it?

6 Mr. *Fairchild.* Yes.

7 Mr. *Stewart.* Okay, and you don't know why he would
8 intentionally give a false statement on that subject?

9 Mr. *Fairchild.* No.

10 Mr. *Stewart.* Now, in paragraph six there, the last
11 sentence says, "I also had the distinct impression that if my
12 testimony at the Nixon trial did not please Mr. Weingarten,
13 he would not help me." Is that accurate?

14 Mr. *Fairchild.* That's accurate.

15 Mr. *Stewart.* And that was based on what Mr. Weingarten
16 said to you, is that right?

17 Mr. *Fairchild.* Yes.

18 Mr. *Stewart.* Okay, and would it be fair to say that
19 when you took the stand at Judge Nixon's trial, you did hope
20 to please Mr. Weingarten?

21 Mr. *Fairchild.* Yes, but when they had the plea
22 bargain agreement, I was going to tell the truth.

23 Mr. *Stewart.* Sure, but you wanted to please Mr.
24 Weingarten as well, didn't you?

Mr. *Fairchild.* Well, yes, sure.

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1 Mr. *Stewart.* Okay. I need to ask about something
2 involving that first conversation with Carroll Ingram about
3 Judge Nixon's investment. When you were interviewed by the
4 FBI, and we went over this just a few minutes ago, in April
5 of 1984, you told them Carroll Ingram came to see you in 1979
6 about that investment.

7 Mr. *Fairchild.* Yes.

8 Mr. *Stewart.* That's right?

9 Mr. *Fairchild.* Yes.

10 Mr. *Stewart.* Okay, and you've said that again here
11 today.

12 Mr. *Fairchild.* Yes.

13 Mr. *Stewart.* All right, and Carroll Ingram has
14 testified that it occurred in 1979 and so has Judge Nixon.
15 Are you aware of that?

16 Mr. *Fairchild.* I was made aware of it in the last few
17 days.

18 Mr. *Stewart.* Okay. You know that now?

19 Mr. *Fairchild.* Yes.

20 Mr. *Stewart.* All right. When you testified in the
21 grand jury in July of 1984--I believe the page number is 51--
22 you testified that you couldn't remember the date when Mr.
23 Ingram approached you for Judge Nixon's investment.

24 Mr. *Fairchild.* No. What I mean by that, I couldn't--
25 the specific dates--it was approximate and I think the

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1 testimony was late '79 or early '80.

2 Mr. *Stewart.* Okay, and you said the same thing when
3 you were cross-examined by Judge Nixon's lawyer at Judge
4 Nixon's trial. It's in the transcript at 688. Is that right?

5 Mr. *Fairchild.* Yes.

6 Mr. *Stewart.* All right, and I'm sorry if I have to
7 make you uncomfortable with this question, but when you
8 testified in the grand jury in November and when you testified
9 in response to Mr. Weingarten's questions at trial, you said
10 that that approach from Carroll Ingram came after Drew's drug
11 bust in August of 1980. It's at least six months later. Ms.
12 Naughton asked you about that yesterday, actually.

13 Now, I need to ask you why you said it's 1979 to the
14 FBI, why you said it was 1979 here, but when Mr. Weingarten
15 had the hammerlock on you, you said it was after Drew's drug
16 bust.

17 Mr. *Fairchild.* Well, I probably said that at trial,
18 but I just don't remember saying that.

19 Mr. *Stewart.* At the trial, and it's at page 493 of
20 the transcript, you said in response to Mr. Weingarten's
21 questioning that Drew's case was pending in federal court
22 when Carroll Ingram approached you about an investment for
23 Judge Nixon.

24 Mr. *Fairchild.* Yes, it was in early '80 or '79 when
25 Carroll first approached me.

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1 Mr. *Stewart.* Okay, so that testimony in response to
2 Mr. Weingarten's questions was not accurate?

3 Mr. *Fairchild.* When did Drew's case start in federal
4 court?

5 Mr. *Stewart.* Well, it never actually got into court.
6 The arrests did not occur until August of 1980, which is more
7 than six months later.

8 Mr. *Fairchild.* It happened in late '79 or '80. If
9 that's what I said there, it's just wrong.

10 Mr. *Stewart.* Do you have any recollection that Mr.
11 Weingarten encouraged you to give that wrong date?

12 Mr. *Fairchild.* No.

13 Mr. *Stewart.* Do you have any explanation for why you
14 gave that wrong date?

15 Mr. *Fairchild.* No.

16 Mr. *Stewart.* You can't recall the reason why you did
17 that?

18 Mr. *Fairchild.* No.

19 Mr. *Stewart.* Do you recall whether you did it to try
20 to please Mr. Weingarten?

21 Mr. *Fairchild.* No.

22 Mr. *Stewart.* You just don't recall one way or another?

23 Mr. *Fairchild.* No.

24 Mr. *Stewart.* I want to ask just a couple questions
25 about this pardon issue, your interest in a pardon. A pardon

1 fine, and then Mr. Baltar would make a note, or would they
2 talk about the answer for a while?

3 Mr. *Fairchild.* I just not--my memory is just not that
4 clear.

5 Mr. *Stewart.* Okay, but there were points--were there
6 points at which they discussed possible answers to different
7 questions, different alternative answers?

8 Mr. *Fairchild.* I'm sure there was.

9 Mr. *Stewart.* Okay, and you were present during the
10 whole conversation?

11 Mr. *Fairchild.* Yes.

12 Mr. *Stewart.* Okay, and do you recall Mr. Weingarten
13 suggesting whether any particular answers ought to be given
14 or would be accurate or appear to be accurate?

15 Mr. *Fairchild.* No, I don't.

16 Mr. *Stewart.* You just don't recall it one way or
17 another?

18 Mr. *Fairchild.* No.

19 Mr. *Stewart.* Now, when were those notes typed up?

20 Mr. *Fairchild.* After Mr. Weingarten left the office.

21 Mr. *Stewart.* Okay, and I believe you testified
22 yesterday that you couldn't say for sure whether Mr. Weingar-
23 ten reviewed those notes or whether he'd never actually saw
24 what Mr. Baltar had written down, is that right?

25 Mr. *Fairchild.* I don't know whether he saw them or

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1 not.

2 Mr. *Stewart.* Okay, but he sure knew that the whole
3 process was going on, that Mr. Baltar was preparing those
4 notes?

5 Mr. *Fairchild.* That was the purpose of him coming to
6 the office.

7 Mr. *Stewart.* Okay, and did you ever have a conversa-
8 tion with Mr. Weingarten thereafter where you discussed the
9 fact that this document, this attachment to Exhibit N-25,
10 existed, and did he ever see you studying this or looking at
11 it?

12 Mr. *Fairchild.* Well, I had it with me when I was in
13 the witness room and he come back there, and Mr. Baltar saw
14 me reading it in the witness room.

15 Mr. *Stewart.* Okay. So you're sitting there reviewing
16 this before you testify, is that right?

17 Mr. *Fairchild.* Yes.

18 Mr. *Stewart.* And Mr. Weingarten walks in on you while
19 you're sitting there reviewing this?

20 Mr. *Fairchild.* To the best of my memory, yes.

21 Mr. *Stewart.* Okay, and that was right before you
22 testified at Judge Nixon's trial?

23 Mr. *Fairchild.* Yes.

24 Mr. *Stewart.* Okay. Did you have any conversation
25 with him at that point right before you go on the stand about

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1 questions he's going to ask or answers you're going to give?

2 Mr. "Fairchild." I could have, but there again my
3 memory is just not that good.

4 Mr. "Stewart." But you did review this document, this
5 attachment to Exhibit N-25, on at least several occasions
6 before you testified?

7 Mr. "Fairchild." Yes.

8 Mr. "Stewart." Okay. At the point when Mr. Weingarten
9 visits you in the witness room, didn't he say something like,
10 now, we've got all our testimony straight, don't we, or
11 you're feeling comfortable about what you're going to say,
12 that kind of thing?

13 Mr. "Fairchild." Yes, I memorized that, and I don't
14 remember specifically what he said, but--.

15 Mr. "Stewart." Okay. Was it something to the effect of
16 you've got down what your answers are going to be?

17 Mr. "Fairchild." Well, I'm sure he went over this with
18 me, but there again my memory is not that good. He come back
19 in the room, but I don't remember--and I'm sure we discussed
20 it, but just what he said and what I thought or said, I don't
21 remember.

22 Mr. "Stewart." Do you recall whether you went over this
23 with him at that time?

24 Mr. "Fairchild." Well, I had it in my hand.

25 Mr. "Stewart." Okay, so he had to see that?

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1 Mr. *Fairchild.* Yes, he knew I was studying it.

2 Mr. *Stewart.* Right. And, in fact, you just said you
3 were memorizing it?

4 Mr. *Fairchild.* Yes, I was; I was trying to.

5 Mr. *Stewart.* Okay. I wanted to ask you just about
6 one statement here on the second page of this document. The
7 question was--it's written out here--have you made a deal to
8 testify in this case. The indicated answer is no, but you
9 had made a plea bargain, hadn't you?

10 Mr. *Fairchild.* Yes.

11 Mr. *Stewart.* And the plea bargain required you to
12 testify when the government asked you to, didn't it?

13 Mr. *Fairchild.* Yes.

14 Mr. *Stewart.* Okay. I want to go back to the meeting
15 in your office with Mr. Weingarten and Mr. Baltar. Was there
16 a discussion at that time of the tape recording that Skip
17 Jarvis had made when he came out to your office back in April
18 of 1984? Was that a subject you discussed?

19 Mr. *Fairchild.* It could have been, but really and
20 truly, I just don't remember.

21 Mr. *Stewart.* So you have no recollection of that?

22 Mr. *Fairchild.* No.

23 Mr. *Stewart.* We could ask Mr. Baltar if he recalls
24 that.

25 Mr. *Fairchild.* Yes, and his memory--I wouldn't

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1 Mr. *Fairchild.* No.

2 Mr. *Stewart.* You told the truth in the grand jury as
3 best you could recall it, is that right?

4 Mr. *Fairchild.* Yes.

5 Mr. *Stewart.* And then after you were indicted, you
6 made a deal under which you thought you'd get no jail time,
7 is that right?

8 Mr. *Fairchild.* Yes.

9 Mr. *Stewart.* How much jail time did you get?

10 Mr. *Fairchild.* Six days in a halfway house.

11 Mr. *Stewart.* Then you testified for the prosecution
12 in Judge Nixon's case, and it was your understanding that the
13 prosecutor would help you get a pardon, is that right?

14 Mr. *Fairchild.* He never specifically said that he
15 would--I don't--he led me to believe that he would help get a
16 pardon.

17 Mr. *Stewart.* All right, and you tried to testify in a
18 way that would please Mr. Weingarten?

19 Mr. *Fairchild.* Yes, as long as I stayed with the
20 truth.

21 Mr. *Stewart.* Sure. Did he give you any help getting
22 a pardon?

23 Mr. *Fairchild.* No. The deal--he made it plain after
24 Judge Nixon's case is finally settled. I hadn't asked him.

25 Mr. *Stewart.* You have to go back and ask him again

1 want to, you know, the first time that Judge Nixon ever
2 mentioned Drew Fairchild, the first time that I have any
3 recollection of it, was after we had been on a hunting trip at
4 Vicksburg.

5 I brought two turkeys back to Hattiesburg. Judge.
6 Nixon was in town, he came by the district attorney's office on
7 a Friday afternoon, he was on his way back to the coast.
8 Carroll Ingram, according to my recollection, was with him, you
9 know, that day. We are riding out to the farm to pick up the
10 turkeys. We had had --

11 Q. Who was riding out to the farm?

12 A. Judge Nixon and I was driving. He had left his car up at
13 the district attorney's office. And we had had, likely or not,
14 it was a Friday afternoon, we probably had a drink up in the
15 office Friday afternoon, maybe two.

16 We was riding up to pick up the turkeys, this would
17 have to be 6, 6:30, 7 o'clock, riding out, and Judge Nixon told
18 me, he said, Bud, I never would have asked you to do anything
19 against your oath of office, never asked you to do anything
20 embarrassing to you, wouldn't ask you to do anything wrong. I
21 said, yes, sir. He said, I was out at Mr. Fairchild's and he
22 asked me to put in a good word for his boy, or would I say
23 something to you about Drew. -- I think, I don't think he said
24 Drew, I think he said his boy. I said, you know, well, I don't
know. I don't know. What is it you want? You want an

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1 apology? I don't know. What does the man want?

2 Q. Are you saying did you say that to Judge Nixon?

3 A. Yeah, that was about my response. I can't remember this,
4 because as I recall this was like in May of 82, you know, when
5 this occurred. But that was about my response, I mean, I was
6 feeling rich and good-looking and, you know, that would have
7 been my typical type answer.

8 He said I'm not asking you to do anything, I'm just
9 saying that Mr. Fairchild asked me to put in a good word.
10 Well, I knew Mr. Fairchild and the judge were kind of getting
11 to be buddy-buddies there.

12 Q. How did you know that?

13 A. Pardon?

14 Q. How did you know that?

15 A. He had told me, or Carroll Ingram had told me that they
16 were or he told me, could a come from Mr. Fairchild.

17 Q. Did he tell you why he'd called Mr. Fairchild?

18 A. He could have. I don't recall offhand, it seemed like he
19 might have told, somewhere during the conversation I knew there
20 was a chance he was going to make some more oil and gas
21 investments with him. Seemed like he said maybe Mr. Fairchild
22 said they were going to take a trip somewhere, you know, now
23 what point in time, I don't remember but all this was, at that
24 time it was nothing real important to me to really remember,
25 so, don't hold me and say it occurred on that time but general

1 impression I had was they got to be on a first name type basis
2 and friendly. So, I took it on myself, said, well, judge,
3 hell, I'm district attorney, I'll pass it to the files. And he
4 said no, I'm not asking you to do that. Now, I'm not asking
5 you to do anything now.

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1 Well, okay. We rode on out to the farm, got the
2 turkey, went inside. I asked him to come in, have a drink.

3 Q. Whose nouse did you go to?

4 A. Go to mine, which was out in the Barrington community. We
5 went inside. He said that he'd come in and have a drink, if I
6 had some Royale Salute, that's kind of a joke between us, very
7 expensive scotch whiskey, somebody gave it to me for Christmas
8 a year earlier and I said I did. He came in, we had a drink,
9 probably had a couple of drinks, and I had told him that I had
10 already had this arrangement worked out with Bill Porter, the
11 man had the same agreement that the federal court had offered,
12 which was probation and a fine, in return for his cooperation.
13 He said do you mind if I call and tell Wiley? Or he could have
14 said, Wiley, Mr. Fairchild. He said did he know? I don't
15 know. I assume he did. Carroll Ingram sure knew it. And so
16 he said do you mind if I tell him? I said no, I don't care.

17 So he called him and as I recall the conversation
18 it's something like --

19 Q. Who made the telephone call?

20 A. Pardon?

21 Q. Who made the telephone call?

22 A. He did. And he told him, he said, I'm out at, said do you
23 remember the man we were talking about today? I'm out at his
24 farm and he tells me that your son isn't going to jail, which
25 was true, you know, because of the plea arrangement and I just

1 wanted to call and tell you that. And he thanked him, told him
2 I appreciate you letting me make some of these investments, you
3 know, with you, and he said, you know, the judge's salary and
4 the number of children that I'm trying to educate and so forth,
5 it was kind of hard and I do appreciate this opportunity.

6 And, with that, I told him, I said let me speak to
7 him. And I picked the phone up and I said, Mr. Fairchild, I
8 want to let you know, I hope you don't think there's anything
9 personal about Drew and us and he said no, I never thought
10 that. I'm real embarrassed about that and so forth and I take
11 full blame here because Judge Nixon did not ask me to say or do
12 this, but I told him, I said, I said I want to let you know
13 that I want Judge Nixon to have credit for helping the boy. Of
14 course I was misleading him because I already had the
15 arrangement worked out with Bill Porter.

16 And I told him, I said I'm going to pass the case to
17 the files. You know, I told Mr. Fairchild that. And that was,
18 you know, basically the sum and substance of it.

19 MR. WEINGARTEN: Thank you. Is this a good time to
20 break, Your Honor?

21 THE COURT: We'll recess until nine o'clock in the
22 morning.

23 (End of volume six.)
24
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1 he say?

2 MR. WEDGARTEN: What specifically did he say.

3 MR. FAWER: I can read from yesterday's transcripts,
4 that's the same question he asked yesterday. He's trying to
5 put on the record twice what is already on the record once. If
6 he can show it was not done yesterday, I withdraw my objection.
7 I can show Your Honor where it was precisely questioned about
8 what was said getting in the car, going in the car, getting out
9 of the car and going in the house and what was said in the
10 house.

11 MR. WEDGARTEN: Your Honor, I think I'm entitled had
12 to clarify a few points about the witness' testimony.

13 THE COURT: Overruled, proceed.

14 BY MR. WEDGARTEN:

15 Q. Would you like me to repeat the question?

16 A. Yes, please.

17 Q. What specifically caused you to know that he was talking
18 about Wiley Fairchild's son?

19 A. Words to me were a, he'd been out to Wiley's and that Mr.
20 Fairchild -- I'm trying to get which sequence it was. The
21 sequence, as I recall it, was I never would ask you to do
22 anything against your oath of office, never ask you to do
23 anything that would be embarrassing to you, I'm not asking you
24 to do anything, but during the sequence of which came first, I
25 don't remember. But he said, Wiley asked me to put in a good

1 word with you for his boy.

2 Q. In what context?

3 A. As I recall, he told me that to begin with, he never would
4 ask me to do anything wrong, do anything against my oath of
5 office, anything that would be embarrassing to me, and I never
6 would do that, but Wiley Fairchild asked me today to put in a
7 good word with you -- He said, he asked me if you and I weren't
8 good friends and I told him, yes, you know, we wer. And he
9 said, well, would you mind putting in a good word for my boy?

10 Q. What specifically did the Judge tell you about his business
11 or financial relationship with Wiley Fairchild?

12 A. Somewhere during the day, or during the event, he told me
13 that he was talking to Wiley about making some more oil and gas
14 investments with him.

15 Q. Did he mention anything about the previous investment?

16 A. I knew he had made some, you know, with him.

17 Q. Did he indicate to you how those investments were going?

18 A. I assume they were doing good because --

19 MR. FAWER: Wait a minute.

20 BY MR. WEINGARTEN:

21 Q. Don't assume.

22 MR. FAWER: Your Honor, with all due respect, this is
23 supposed to be a lawyer on the stand who has some vague
24 understanding of the rules of evidence.

25 MR. WEINGARTEN: We don't need any of your comments --

1 A. Because that was what I remember.

2 Q. And that was about three hours ago. Right?

3 A. Right.

4 Q. And that doesn't seem to be your recollection three hours
5 later?

6 A. If it's important,.

7 Q. Everything's important that you say on that witness stand.

8 A. All right, sir.

9 Q. At least to this man, it is.

10 A. Sure.

11 Q. So what you're telling us now he didn't differ from you
12 there, he told you that he had been there in the car. Right?

13 A. Told me the only, what I can say is he had been to Wiley's
14 and Wiley mentioned it to him.

15 Q. Okay. And that Wiley had asked me, didn't want to do
16 anything, didn't want to embarrass you, didn't want to do all
17 these things?

18 A. That's true.

19 Q. But Wiley wanted him to put in a good word with you.
20 Right?

21 A. That's right.

22 Q. Let's stop there a minute. You read Wiley's testimony.
23 Right?

24 A. Just now, right.

25 Q. You read it before. You said just now this isn't the first

1 going to help your boy?

2 A. Right.

3 Q. Right?

4 A. That's correct.

5 Q. Now we have a conversation, ostensibly between a man who's
6 had some drinks and Wiley. By the way have you ever heard or
7 ever read of Wiley testifying anyplace to any of the rest of
8 this conversation that you now put in it?

9 MR. WEINGARTEN: We respectfully object.

10 THE WITNESS:

11 A. I don't recall.

12 BY MR. FAWER:

13 Q. What?

14 A. I don't remember reading it, no.

15 Q. Tell us the rest of it. Let me hear the dialogue that's
16 coming from the Judge in this phone call. Explain it.

17 A. You want it?

18 Q. Sure.

19 A. Okay. The Judge told him, he said, Mr. Fairchild, this is
20 Walter. I just want to tell you that the man we were talking
21 about today, I'm out at his farm, talked with him, and he tells
22 me that everything is going to be all right with your boy.
23 That your boy is not going to go, I believe his words to this,
24 this is the essence of it now, I didn't write it down, I don't
25 have a transcript of what was said, I'll tell you what my best

- 1 recollection of what was said.
- 2 Q. I just want you to understand something, --
- 3 A. Okay.
- 4 Q. -- from this point forward, it's new. It wasn't said
- 5 earlier today and it wasn't said by you in July.
- 6 A. Okay.
- 7 Q. But feel free to add anything you want.
- 8 A. No, I don't need to.
- 9 Q. Go ahead. You had some more you were coming up with. Come
- 10 on.
- 11 A. That was it. And I asked him --
- 12 Q. Something about the boy, you started to add something. Let
- 13 me hear it. Go on.
- 14 A. Let's rehear it.
- 15 Q. I'm sorry to interrupt. You're better with the free flow.
- 16 What was the next sentence supposed to have come from Judge
- 17 Nixon?
- 18 A. The Judge told him he had a conversation with me.
- 19 Q. Go ahead.
- 20 A. Okay. And that he had told me everything was going to be
- 21 all right.
- 22 Q. You said that. Go on. Try to move beyond that.
- 23 A. That was the sum and substance of that.
- 24 Q. What about the children? Come on.
- 25 A. Okay. He thanked him for allowing him to make these

1 A. Well, as I mentioned a moment ago back in 1979, which was
2 the last year I served in the Mississippi Senate, I had an
3 occasion to visit with Judge Nixon when he expressed to me his
4 concerns about his limitations of financial income, and his
5 general discussion that he would like to do as some of his
6 colleagues had done on the bench, and that's have an
7 opportunity or an occasion to make investments in oil and gas
8 properties.

9 Q. Did the general discussions ever become more specific?

10 A. They did.

11 Q. When and how?

12 A. Well, I would say sometime during the year of 1979 and
13 probably later toward the end of the year he specifically asked
14 me about the possibility of making an investment in oil
15 properties with Mr. Wiley Fairchild.

16 Q. Who mentioned Wiley Fairchild first?

17 A. Judge Nixon did.

18 Q. What did he say about him?

19 A. Well, he just said that some of his colleagues on the bench
20 had had occasion to make investments in oil and gas properties,
21 and he would like to be in that -- in a position to do so if
22 that could be done.

23 Q. What did he say about Mr. Fairchild specifically?

24 A. I don't recall that he said anything specifically about Mr.
25 Fairchild. He knew that I represented Mr. Fairchild down



1 Q. What's your best testimony on that?

2 A. Well, my best testimony was that there was more than one.

3 I could say several, I could say three or four. That would be
4 something that would be reasonable.

5 Q. Did you take all of Judge Nixon's calls at that time?

6 A. I'm not sure that I took all of his telephone calls at that
7 time. I didn't at at a later time.

8 Q. At that time did you avoid his calls?

9 A. If I didn't avoid them, I knew that that was a part of the
10 call that was coming, and I knew that I hadn't talked to Mr.
11 Fairchild and I didn't have any news to give Judge Nixon.

12 Q. Is that in fact what happened?

13 A. Beg pardon?

14 Q. Did that in fact happen?

15 A. What?

16 Q. That you avoided the calls for that reason?

17 A. I would say yes.

18 Q. What's your best sense of when the specific request for
19 Wiley Fairchild was made?

20 A. My best sense is that it was made in late 79, late 1979,
21 maybe early 1980.

22 Q. And when is your best sense as to when you approached Mr.
23 Fairchild?

24 MR. FAWER: Excuse me. You just asked him.

25 BY MR. WEINGARTEN:

1 Q. When Judge Nixon approached you?

2 A. My best sense is it was several months before that, two or
3 three months before that.

4 Q. So your testimony is you approached Mr. Fairchild in late
5 79 or early 80?

6 A. Yeah.

7 Q. Did Judge Nixon indicates --

8 MR. FAWER: I heard late 79. You just added early
9 80.

10 MR. WEINGARTEN: I thought he said that.

11 MR. FAWER: I'd like it read back. Excuse me, sir.
12 My understanding, I'll stand corrected if that's it, the
13 witness is on the stand, but the question was when did you
14 contact Mr. Wiley Fairchild.

15 MR. WEINGARTEN: Why don't I clarify.

16 MR. FAWER: Concerning the Judge's request and the
17 witness testified his best judgment is it was late 79. If
18 that's not so, fine. That's my understanding. What happened
19 is Mr. Weingarten started moving it later than that.

20 BY MR. WEINGARTEN:

21 Q. Why don't we clarify. So we're perfectly clear, what is
22 your best, let's start from the very beginning. When did Judge
23 Nixon first talk to you about investments?

24 A. He talk to me about investments in the year 1979, and the
25 reason that I believe that is that I have a belief, I have a

1 sense that I was still in the Senate at that time. 1979 was
2 the last year I was in the Senate.

3 Q. When did Judge Nixon specifically mention Wiley Fairchild
4 for the first time?

5 A. I think it was in that, in the year of 1979, and probably
6 toward the latter part of that year.

7 Q. And how long a period of time elapsed between the first
8 mention of Wiley Fairchild and your contact with Wiley
9 Fairchild?

10 A. I believe that I said earlier to that same question that it
11 was several weeks, possibly months.

12 Q. And what caused the delay?

13 MR. FAWER: Your Honor, we just went through this,
14 and we've heard the testimony. I thought we're now trying to
15 establish the dates.

16 MR. WEINGARTEN: I can ask questions.

17 MR. FAWER: I object on the grounds it's repetitive.

18 THE COURT: Overruled.

19 THE WITNESS: The delay from, re-state your question.
20 I'm now lost.

21 BY MR. WEINGARTEN:

22 Q. You established there was a period of time that elapsed
23 between Judge Nixon's initial request and the time you
24 contacted Wiley Fairchild?

25 A. That's correct. I think that was several weeks.

1 Q. And what caused that delay?

2 A. Well, what caused that delay was my failure to contact Mr.
3 Fairchild.

4 Q. And what caused that failure?

5 A. Just my reluctance to contact him.

6 Q. Okay. What did you say to Wiley Fairchild?

7 MR. FAWER: I object. I thought we were heading to a
8 point, the date. Why don't you ask --

9 MR. WEINGARTEN: I can ask the question any time and
10 any way I want, Mr. Fawer.

11 MR. FAWER: Excuse me. A little testy this morning.

12 MR. WEINGARTEN: Yes, I am.

13 MR. FAWER: Bad weekend? Judge, with all due
14 respect, it seems to me, I have made an objection, he said he
15 was going to rephrase it and get an answer in terms of the
16 contact by the witness with Wiley Fairchild. I know I can do
17 it on cross-examination; he said that was what he was going to
18 do and specifically --

19 MR. WEINGARTEN: I think I did do it.

20 MR. FAWER: We're -- so long as we have the date,
21 that's fine.

22 THE COURT: Go ahead.

23 BY MR. WEINGARTEN:

24 Q. Do you have a specific recollection of how you contacted
25 Mr. Fairchild on this matter?

1 mine.

2 Q. To your knowledge was there further contact between Judge
3 Nixon and Wiley Fairchild?

4 A. Yes, there was. I was aware that Judge Nixon and
5 Mr. Fairchild were talking with each other on the telephone. I
6 don't know on what kind or basis of regularity that was, but I
7 got the impression that it was occasionally that they talked on
8 the telephone and may have even met personally together without
9 my knowledge. I know that they did have contact after that.

10 Q. Did it ever come to your attention that Wiley Fairchild and
11 Judge Nixon had contact about Drew Fairchild's case?

12 A. Yes, it did. Sometime in the late fall or 1962,
13 Mr. Fairchild told me that he had asked Judge Nixon to talk to
14 Mr. Holmes about Drew Fairchild's case.

15 Q. What else did he say to you?

16 A. Said that Judge Nixon had talked to him and Judge Nixon had
17 confirmed that he had talked to him.

18 Q. And did he get any result from Judge Nixon?

19 A. Well, the results that he indicated to me were that the
20 results were positive that he had in fact talked to him and
21 that those results were positive.

22 Q. In what sense positive?

23 A. In a sense of well being that Drew Fairchild's case was
24 going to be okay.

25 Q. And where did Wiley Fairchild say he got this information?

1 A. Said I got it from Judge Nixon.

2 Q. Do you have personal knowledge of Drew Fairchild's case
3 being passed to the file?

4 A. Well, I know it was passed to the files the latter part of
5 December, 1982 and sometime after it was passed to the files,
6 the district attorneys office, Mr. Holmes, gave me a copy of
7 the order that passed to the files and asked me to send it to
8 Mr. Fairchild and I did.

9 Q. Did the information you received from Mr. Fairchild about
10 his contact with Judge Nixon come before or after the case was
11 passed to the file?

12 A. Came before the case was passed to the file.

13 Q. Did Judge Nixon ever discuss with you his involvement or
14 Drew Fairchild's case?

15 A. Judge Nixon did not discuss with me because I'll qualify
16 the term discuss. But Judge Nixon did indicate to me that he
17 had talked with Mr. Holmes about Drew Fairchild's case and that
18 he had -- he told me that.

19 Q. Did he indicate to you why he had spoken to Bud Holmes
20 about Drew Fairchild's case?

21 A. Because Mr. Fairchild had asked him to.

22 Q. And did he indicate to you anything that Mr. Holmes may
23 have done or said about Drew Fairchild's case?

24 A. The indication was that he talked to Mr. Holmes about it
25 and that Mr. Holmes was -- I would say that Mr. Holmes would

1 give consideration to his request. There was a good feeling or
2 a good positive reaction to that.

3 Q. Did Judge Nixon indicate to you why he had gone to Bud
4 Holmes?

5 A. Well, no, he didn't indicate why he did. He just told me
6 that Mr. Fairchild asked him to.

7 Q. Did he indicate to you why Mr. Fairchild asked him to?

8 A. Mr. Weingarten, I'm not sure he did. I'm not sure he did
9 indicate to me why he went to Mr. Holmes.

10 Q. Was this conversation with Judge Nixon by telephone or in
11 person?

12 A. It was by telephone.

13 Q. Do you recall where you were during the conversation?

14 A. I think I was at my office, but I'm not absolutely sure
15 about that.

16 Q. And do you recall who placed the call?

17 A. No, I do not. I sure do not.

18 Q. How was the conversation how did it begin? How did the
19 subject come up?

20 A. Well, in the context of talking with Judge Nixon, he just
21 simply indicated to me that he had talked to Mr. Holmes about
22 Drew Fairchild's case. That was really -- it was really a
23 passing comment, an understated thing that wasn't a full
24 discussion about it.

25 Q. Did it pass into something else?

1 MR. FAWER:

2 Q. It is an accusation that you have known that he had made in
3 the past; am I correct?

4 A. Only from the standpoint of what has been told to me.

5 Q. I understand that. That's my point. When he mentioned
6 this request he made of Judge Nixon, he didn't say anything to
7 you that he was complaining about Holmes and you blackmailing
8 him?

9 A. No, he did not.

10 Q. Fine.

11 A. Absolutely did not.

12 Q. That's all. He mentioned to you that he had asked
13 something of Judge Nixon in terms of asked him to speak to Bud
14 Holmes, correct?

15 A. Yes, he asked to --

16 Q. I beg your pardon. Go ahead.

17 A. Yes, he said that he asked Judge Nixon to speak to Bud
18 Holmes.

19 Q. And that it was about the case?

20 A. And it was about Drew Fairchild's case.

21 Q. And that's as far as you went. You know nothing more than
22 from Wiley Fairchild about it, correct?

23 A. I know that Wiley Fairchild told me that Judge Nixon
24 confirmed that he had spoken to Bud Holmes about the case.

25 Q. Excuse me. Judge Nixon confirmed that to you yourself?

1 A. Certainly he did.

2 Q. We'll come to that.

3 A. Okay.

4 Q. Are you upset about my questioning you right now because I
5 got the impression that you wanted to tell me that.

6 A. Am I upset about your questioning?

7 Q. Yes. Are you upset about my questioning you about this
8 area?

9 A. I am upset about those questions, okay.

10 Q. I'm sorry.

11 A. And if you've got to question me about that, that's fine.
12 I'm willing to answer them.

13 Q. I want you to be comfortable. You understand I have to do
14 this okay?

15 A. Okay.

16 Q. Now Judge Nixon as well in the same some point in time
17 mentioned to you that Wiley had asked you to speak to Dad, you
18 confirmed that he did that, correct?

19 A. That's correct.

20 Q. Is it fair to say, Mr. Ingram, wasn't said any secretive
21 way, he wasn't telling you about this furtively or any of that
22 sort. He just told it to you in the course of a conversation?

23 A. That's right. He did.

24 Q. When Wiley told it to you, it was the same way, right?

25 A. Certainly.

1 Q. You indicated that Wiley had confirmed that Judge Nixon had
2 in fact spoken if he requested, he had spoken to Bud Holmes?

3 A. That's right.

4 Q. That's basically the sum and substance or what you know
5 about this matter before; is that correct? That's the sum and
6 substance of what you know about it before Bud Holmes discusses
7 it with you after your grand jury in July of 84?

8 A. That's exactly right.

9 Q. I haven't left anything out, have I?

10 A. I think that fairly states it, yes.

11 Q. From that point on until -- those were two passing remarks
12 that you linked in the sense you realized by the way, Wiley and
13 Judge Nixon's not talking to you statement. It wasn't one
14 conversation?

15 A. No, it wasn't.

16 Q. So that what happened is that you saw Wiley, he mentions
17 it. At some point in time you believe after that Judge Nixon
18 mentions it?

19 A. That's right.

20 Q. And you realize that the two of them have sort of mentioned
21 the same what appears to you to be the same event, same
22 incident?

23 A. Yes, and I'm not so sure how firmly I connected the two.

24 Q. Okay. Is it fair to say it was virtually or no
25 significance to you because they gave it no significance?

1 A. Well, you're putting words into my mouth about it being
2 virtually or no significance to me. It was or some
3 significance to me, but I didn't have a clear outline of what
4 had occurred.

5 Q. You say it was or -- let me ask the question the other way.
6 What significance?

7 A. Well, it was a significance in that it was a conversation
8 that both of them referred to.

9 Q. Okay.

10 A. All right. And that was significant to me, but it wasn't
11 something that I felt like that I had a command or the
12 knowledge or the situation. It --

13 Q. No more command or it or no more reason to think about it
14 than you did about the actual date or the verbal agreement back
15 in early 1980, right?

16 A. I say that's fair, yes.

17 Q. And there's no reason why you have any fix on when that
18 took place, do you? When they were -- not when they spoke to
19 you, but when this conversation or this request by Wiley was
20 made or Judge Nixon, you don't know when that happened?

21 A. It's my belief that it happened in the fall of 1982.

22 Q. I heard you say that before. I'd like you to tell us why?

23 A. Because that's my sense of the happening of these events
24 that places a time on it. But no, I don't have a note that
25 says that here I learned this today and this is an evident fact

1 that I can tell you that, so I can't.

2 Q. Now what I need to know is that there's obviously we talk
3 and we call things months and years. What is it in your mind,
4 that distinguishes let's say late -- let me finish. Late 82
5 from early 83?

6 A. Okay. Late 82 I know that that case was passed to the
7 files in late 82.

8 Q. Right.

9 A. And it's my belief that that knowledge or the phone call
10 from Wiley Fairchild came to me before the passing of that case
11 to the files.

12 Q. What makes you say that?

13 A. Because of the event of the passing it to the files.

14 Q. It was passed to the file --

15 A. And based on my memory.

16 Q. I understand. That's what I'm dealing with now. It was
17 passed to the file and 30 days later it came right out, right?

18 A. Sure.

19 Q. You knew that?

20 A. I knew it came out sometime later.

21 Q. It was 33 days later.

22 A. Okay.

23 Q. How do you associate that in point of time? Let me put it
24 another way. I take it the first time you ever thought about
25 this is really when Bud starts questioning you about it after

1 MR. WEINGARTEN: Your Honor --

2 MR. FAWER: Excuse me. I beg your pardon.

3 MR. WEINGARTEN: I said Mr. Fawer must have missed
4 much of the evidence in this case.

5 MR. FAWER: I don't think anyone in this courtroom
6 will see.

7 MR. WEINGARTEN: We'll see. May I proceed?

8 THE COURT: Proceed.

9 MR. WEINGARTEN:

10 Q. What did Judge Nixon tell you first off about his contact
11 with Wiley Fairchild and Bud Holmes in the Drew Fairchild case?

12 A. I believe that there's only been one statement that Judge
13 Nixon has made to me with respect to the Drew Fairchild case
14 and as I told you this morning, he made the statement to me
15 that Mr. Fairchild had asked him to talk to Mr. Holmes about
16 Drew's case.

17 Q. Stop there for one second if you may.

18 A. Okay.

19 Q. In connection with that statement, did Judge Nixon indicate
20 to you that Wiley Fairchild had expressed some concerns about
21 the handling of Drew's case?

22 MR. FAWER: Object, Your Honor. He's asked the man --
23 what he wants to do, he will not let him finish, stop in the
24 middle of his statement and he wants to parse the answer and
25 add in it a different phrase that's totally unfair. He asks

1 him, then stops and says and adds a factor that is not in the
2 statement and I think it's only fair that the man be permitted
3 to say as he did this morning frankly exactly what the judge
4 said and that constitutes the statement. No matter what he
5 would like to add by virtue of the question it doesn't change
6 the witness's testimony as to what Judge Nixon said and it
7 seems to me it's unfair and repetitious of what was said this
8 morning and the witness has just testified now that. It's the
9 second time he's being asked the same question.

10 THE COURT: Proceed.

11 MR. SENGARTEN:

12 Q. Please continue.

13 A. Okay. There was a sense that Mr. Fairchild's concerns
14 about Drew's case and that that was why he was asking Judge
15 Nixon to talk to Mr. Holmes about the case and Judge Nixon
16 simply was saying that I did talk to Mr. Holmes about the case
17 and have -- and was saying that to me that he did.

18 Q. Did Judge Nixon indicate to you that Wiley Fairchild had
19 expressed those concerns before?

20 A. I got the sense or the belief that there had been an
21 expression of his concern before, but I don't have any personal
22 knowledge of that. I don't know a way to nail that down. But
23 yes, I think that his concerns had been there for sometime.

24 Q. All right. And what exactly did Judge Nixon tell you he
25 did about Wiley Fairchild's request?

- 1 A. Said he talked to Mr. Holmes about it.
- 2 Q. And did he indicate to you what Mr. Holmes's response was?
- 3 A. That Drew Fairchild's case was okay, that there was not
- 4 anything going to happen in Drew Fairchild's case.
- 5 Q. And did Judge Nixon indicate to you whether or not he
- 6 conveyed that information back to Mr. Fairchild?
- 7 A. He did.
- 8 Q. And what did he say?
- 9 A. Said he told Mr. Fairchild that I believe he called him
- 10 Wiley. Told Wiley that.
- 11 Q. Now when is your best recollection as to when Holmes asked
- 12 you whether or not Wiley Fairchild had taped the call?
- 13 A. I think that that happened sometime after my grand jury
- 14 testimony in July of 1984.
- 15 Q. And how do you think that?
- 16 A. Beg your pardon?
- 17 Q. How do you date that?
- 18 A. How do I date that? Well, I date that because -- I'm
- 19 confused about your telephone calls. You have now switched to
- 20 the telephone call that Judge Nixon made to me at my home; is
- 21 that correct?
- 22 Q. No. Excuse me.
- 23 A. Let's come back and clarify what telephone call you're
- 24 talking about.
- 25 Q. I apologize. Your first notion that an investigation was

